MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 25, 1983

The meeting of the State Administration Committee was called to order by Chairman Story at 10:30 a.m. on January 25, 1983 in Room 331 of the State Capitol.

ROLL CALL: Roll was called with Senators Tveit and Stimatz arriving late.

SENATE BILL 181: The hearing was opened to S.B. 181, "AN ACT TO TRANSFER THE STATE INFORMATION AND RESEARCH SYSTEM FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE; TO CLARIFY THE RESPONSIBILITIES OF THE STATE RESEARCH AND INFORMATION SYSTEM; AMENDING SECTION 90-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE."

SENATOR MIKE HALLIGAN, District No. 48, presented this bill to the committee. The bill is an act to transfer the state information and research system, known as "Census and Economic Information Center (CEIC)" from the Department of Administration to the Department of Commerce. A copy of his written testimony is attached as Exhibit 1.

DAVID ASHLEY, Deputy Director, Department of Administration, supports this bill for the reasons mentioned in Senator Halligan's testimony. He stated that most of the products developed by this system are utilized by the Department of Commerce. The information is also used by local government and the Department of Commerce would be a good place for access.

NANCY LEIFER, Department of Commerce, stated the change would be effective in getting the information to people and help programs functions inside the department.

Chairman Story asked for opponents. There were no opponents. He then asked for questions from the committee.

Senator Towe asked David Ashley is there was some reason for the effective date.

David Ashley said he does not have any problems with changing the effective date.

Senator Halligan stated that the staff attorney had some proposed amendments to this bill.

Dave Cogley, staff attorney, explained that the amendments would amend two existing sections of law to change the Department of Administration to the Department of Commerce.

Chairman Story closed the meeting on S.B. 181.

SENATE BILL 170: AN ACT ELIMINATING THE RIGHT OF FIRST REFUSAL OF THE FORMER OWNER OF A REAL PROPERTY INTEREST ACQUIRED FOR A PUBLIC USE AND LATER ABANDONED; REPEALING SECTIONS 70-30-321 and 70-30-322, MCA."

SENATOR BOYLAN, District #30, presented this bill to the committee. He furnished the committee members with a copy of a brief in support of this bill. (Exhibit 2) He advised that the bill was a repealer of a bill passed in the last session.

PAT UNDERWOOD, Montana Farm Bureau, supports this bill. Montana Farm Bureau members were concerned over the legislation that passed last session. This eminent domain repealer would help. When the property is condemned and not needed it should revert to the landowner or whoever had the deed, not to the highest bidder.

TIM STEARNS, Northern Plains Resource Council, supports this bill. A copy of his written statement is attached as Exhibit 3. He also proposed an amendment to this bill which is attached as Exhibit 4.

Chairman Story asked for opponents. There were no opponents. He than asked for questions from the committee.

Senator Story asked how it was determined when the Highway Department quits using the land.

Senator Boylan said the Highway Department sometimes buys large blocks of land, not just necessarily the right of way. If you check through the records of the Highway Department you will find a lot of land that is not being used.

Senator Story asked how you get the Highway Department to declare that the land is not used. Why would they turn it back if they can't sell it?

Senator Boylan said the bill does not relate to that. If they should decide to sell it would give the original landowner a way to get the land back. If the Milwaukee railroad is abandoning the right of way, the land will not be sold to the highest bidder but will go back to the original owner.

Senator Story pointed out that this only solves one problem, that being if the land should come up for sale.

Senator Towe asked who the chief sponsor of the bill was last session.

Tim Stearns from the Northern Plains Council said the bill was SB 287 and the sponsors were Manley, Conroy, Graham and Galt.

Senator Towe suggested to the committee that there may be a need for matched bids. If you are a farmer and the Highway Department bargains with you for your property and you give them a deed, the laws would not apply. There might be some merit in allowing you a preference bid in that situation.

Senator Marbut referred to Sections 60-2-107 and 60-4-208 of the Montana Code. He stated abandonment is covered in various places but that abandonment is a separate issue.

Senator Stimatz stated that the State Highway Department usually pays good money for land they have condemned. He feels there should be an adjustment for the purchase price. The original owner received the money.

Chairman Story is not satisfied that the bill covers all that was intended. He appointed a subcommittee to review the bill, Senator Marbut and Senator Towe.

SENATE BILL 29: The hearing was opened to S.B. 29, "AN ACT TO REMOVE THE TRANSPORTATION OF GARBAGE FROM THE REGULATORY AUTHORITY OF THE PUBLIC SERVICE COMMISSION; ABOLISHING THE CLASS D MOTOR CARRIER CLASSIFICATION; AMENDING . . .

SENATOR DOVER, District #24, sponsored this bill and explained the problems that this bill would alleviate in Lewistown. A copy of his written testimony is attached as Exhibit 5.

Chairman Story commented that this bill will remain in committee until at least February 18th, when the bill can be reviewed with the House Bills which pertain to the same subject.

WAYNE BUDT, Public Service Commission, would like to go on record in support of this bill. However, he would urge that the committee hold this bill until HB 73 can be transferred.

DONN PENNELL, Lewistown, supports this bill. He feels the situation now is license without regulation. With competition everything works out reasonably and fair.

MIKE STEPHENS, Montana Association of Counties, supports all three bills, SB 29, HB 73 and HB 183. He feels something should be done to cut the cost to residents and hopes one of these three bills will solve the problem.

Chairman Story called for opponents.

BILL ROMINE, representing Solid Waste Contractors Assn., hopes this bill will be held until Schultz' bill has been acted upon in the House. He stated class D carriers are not rate regulated but they are regulated. The problem in Lewistown is the only problem. He does not see the problem coming in from all over the state. He feels there are many areas where there is competition. He stated Senator Dover's testimony is an indictment of the Public Service Commission, not of the class D carriers. People of the association have spent thousands and thousands of dollars providing good equipment and good service. He feels Representative Schultz' bill takes a more even handed approach and will address this problem.

F. L. GREEN, previously a garbage man and a member of the Montana Solid Waste Organization, is opposed to this bill. The organization was formed to give the public services that were needed but the prices were not important. He feels the Lewistown incident is an isolated issue that the garbage people have no control over.

LESTER E. FOLEY, Sanitation Service in Billings and Bozeman, feels Schultz' bill is the proper bill that will take care of the problem. He stated, don't let one rotton apple destroy what the Montana people have today in good economical service.

SCOTT ORR, Montana Solid Waste Contractor in Libby, is in opposition to this bill. He presented the committee with a letter from Benjamin Collen, in Whitefish, (Exhibit 6) which reflects his viewpoint. He would like to make exception to some of the remarks Senator Dover made. The contractors do not have a monopoly in a lot of the area in the state, although in some areas we do. It is hard for two or three contractors to make a living in one area and as a result one or two of the contractors will sell out to the competitor. He feels the problem in Lewistown needs to be solved but not by doing away with the hauling system which is working in the rest of the state. He feels HB 73 will correct the problem.

JOHN PALAGI, Great Falls, Montana, Vice President of the Montana Solid Waste Association, opposes this bill. They feel the deregulation is going the wrong way to help the entire state. Deregulation would do more harm for the state than good.

SANDRA MINTYALA, Mister M Disposal, Lewistown, rose in opposition to this bill as the "bad apple" from Lewistown. Mister M Disposal started back in 1974 and they contract several cities in Montana. She gave dates for when the company took over first the father's operation and then the Hartford's from Lewistown. When they took

over the Hartford's they reviewed the accounts and brought them up to the rates they charged. Several of the accounts were way out of line as to the current rates. When another garbage hauler was established in Lewistown there was a public hearing before the Public Service Commission because Mister M Disposal felt that another carrier was not justified for a town the size of Lewistown. The Public Service Commission ruled there was no need for a second garbage hauling permit in Lewistown. At the present time they have 2100 accounts and she questioned whether she would have that many if their service was so bad. She is in opposition to the rule to completely deregulate class D carriers. She feels the 60 to 70 carriers in the state should be regulated.

Chairman Story asked for questions from the committee. There being none he asked Senator Dover to close.

Senator Dover stated that he felt this was a very good hearing and he appreciated the comments of Mrs. Mintyala. As was stated in testimony, there are some problems in Lewistown. He feels there should be some competition, another dealer in Lewistown. Lewistown is not unique in having this situation. He has heard of other towns that have had the same problems. People are dissatisfied with service but have no where else to turn. There are some very serious problems that need to be addressed here and he questions whether Senator Schultz' bill is the answer.

A copy of a letter from the Public Service Commission is attached as Exhibit 7. It refers to HB 73. The PSC feels that HB 73 is in the public interest and fairly resolves the existing problems.

SENATE BILL 205: The hearing was opened to S.B. 205, "AN ACT EXTENDING FOR 2 YEARS THE TERMINATION DATE OF CHAPTER 552, LAWS OF 1981, CONCERNING THE STATE EMPLOYEE INCENTIVE PROGRAM; AMENDING CHAPTER 552, SECTION 7, LAWS OF 1981; AND PROVIDING AN EFFECTIVE DATE."

SENATOR ECK, District #39, explained that her bill was a simple one. It extends for 2 years the employee incentive program which was passed last session. The bill allows awards to be made to encourage employees to submit suggestions which would improve the operation of their Department and save money. This has saved the state around $200,000. This program gives employee recognition to employees who come up with good ideas. She feels that 3 years is a reasonable time to decide whether a program is really working well.

DENNIS M. TAYLOR, Administrator, Personnel Division, Department of Administration, gave testimony in support of this bill. (Exhibit 8) He advised if there were any questions from the committee he would be happy to answer them.

TOM SCHNEIDER, Executive Director of the Montana Public Employees Association, supports the continuation of this program for another two years.

RUSS McDONALD, Personnel Director, Highway Department, said the incentive awards program gives employees an ownership in the government. He feels this program is cost saving to the agency and to the State of Montana.

ACTION ON SENATE BILL NO. 205: Senator Towe made a motion that Senate Bill No. 205 DO PASS. The motion passed unanimously.

SENATE BILL 40: Chairman Story turned the meeting over to Vice Chairman Hammond. The hearing was opened to S.B. 40, "AN ACT TO GENERALLY REVISE THE LAW RELATING TO STATEMENTS OF ECONOMIC IMPACT OF PROPOSED ADMINISTRATIVE RULEMAKING; AMENDING SECTIONS 2-4-305 AND 2-4-405, MCA."

SENATOR STORY, District #43, presented this bill as sponsor. In past years a law was developed whereby the Administrative Code Committee could require Economic Impact Statements. If the request was made we could force an agency to take the time and effort to go through a formal impact statement. There are problems. Last session a similar bill passed through the House and Senate and was vetoed by the Governor. This bill would make it possible not to request a full scale Economic Impact Statement. On page 2 is a list of those things that we might want to know as opposed to a full scale impact statement. The Administrative Code Committee is a reactive committee and they do not know that a problem exists until the hearing comes up. They want the ability to ask questions at the time the problem comes up and before the rule is implemented. There is a six month suspension period from the time of noticing the fact an agency is considering adopting a rule to the time that the rule is implemented.

JANELLE FALLON, Montana Chamber of Commerce, supports this bill. She feels the concept is something extremely important that would make state agencies look at the cost of some of these things.

DON ALLEN, Montana Petroleum Association, supports the bill in the sense that with today's economy we must be more aware of a cost effective government which should be run more like a business. He feels this bill should go further than just the rule making process, but that it should include policy making.

CHAD SMITH, Montana Hospital Association, supports this bill. She stated that the hospitals of the community are the most regulated industry in the state of Montana. The number of regulations hospitals are required to comply with significantly contributes to the rising cost of hospitals. They particularly support Section 1, parts (d), (e), (f) and (g), where the committee can require an analysis of whether or not they are less costly with the same result.

PAT WILSON, Montco, supports this bill. She gave a review of a problem that occurred last summer in relation to one of their mining operations. With this bill the problem would not have arose.

Acting Chairman Hammond asked for opponents.

MONA JAMESON, legal counsel for Governor Schwinden, is in opposition to this bill. She feels the concept of economical analysis is appropriate and good and the administration definitely supports the concept. The implementation of this concept as relates to rules is inappropriate. Some programs need rules to actually begin process and certain activities. Delay costs money and the fiscal impact in these hard times is not practical. Page 3 of the bill is an example of the fiscal impact and delay on an agency. A rehearing can be held which again costs extra dollars. Page 3, lines 24 and 25, puts the agency in a position to already be expending dollars. The ability to withdraw requests once made compacts the problem of extra expense. Page 1, line 16, the committee can designate the agency that it wishes to do the statement. It is unclear whether the impact statement would be valuable from certain agencies. She mentioned some constitutional problems that she has with the bill. She recommends that the bill do not pass. She supports the concept but urges the committee to find another alternative.

JOHN LaFAVER, SRS, opposes this bill. The concept is acceptable and is something they could support. The major problem, from his department's point of view, is the length of delay that the bill would impose on their rule making process. If we are hindered by as much as a six month wait, with the rule making process taking 3 months, we could run through a fiscal year. The Federal Government is changing rules and laws and we have to be able to administer our programs parallel to the Federal Government. The state could lose millions of dollars of financial penalties. A copy of written testimony from Russell Cater, Chief Counsel, SRS, is attached as Exhibit 9.

KEITH KELLY, Director, Department of Agriculture, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 10.

BOB WOOD, Department of Commerce, supports the concept of the bill but sees constitutional problems. He is concerned that there could be serious problems due to delay in health related boards and small boards with profits.

LYLE MANLEY, Department of State Lands, gave testimony in opposition to this bill. (Exhibit 11)

JOY BRUCH, League of Woman Voters of Montana, opposes the bill for many of the reasons previously mentioned.

FRANK CROWLEY, Attorney, Montana Department of Health and Environmental Sciences, advised that if there were any questions pertaining to the Anaconda closing he would stay after the meeting to discuss them. The Department sends out copies of proposed rules months in advance and works out whatever they can prior to the initiation of the rule making procedure. They make a lot of changes to the rules before they are proposed. They concur with the exclusion of an Economic Impact Statement since in some circumstances it would not be required. With the six month suspension there is a potential of a year's delay of the rule. Often times the Federal Government imposes time limits and they hope the committee would take that into account. There is no provision as to who will pay for the Economic Impact Statement. Some evaluations can be expensive. They need clarification as to the level of professional required for other than the Economic Impact Statement. There is no one in the office who could perform this type of analysis.

DON McINTYRE, Department of Natural Resources, agrees with the remarks of the Governor's office and the other state agencies. Rule making activities are not a power of the code committee.

SCOTT CURREY, Department of Labor, opposes this bill for the reasons already stated.

Testimony was received from John A. Meredith, Administrator, Department of Revenue, Legal and Enforcement Division (Exhibit 12) and from the Department of Fish, Wildlife and Parks (Exhibit 13).

Acting Chairman Hammond asked Senator Story for any closing comments.

Senator Story said that the opponents are looking at this bill as though we would use our powers to somehow put a monkey wrench into the machinery of state government. He then explained the bill in relation to their objections. The reason for the six month suspension is to provide a cap. They cannot delay longer than six months. It is designed to help not harm. The with-

drawal of a request is there in the event we request an impact statement and then find we do not need it. There would be a greater cost if we could not withdraw our request in the middle but had to allow the statement to be completed. With regard to another agency making the Economic Impact Statement, if the agency making the rule also makes the Economic Impact Statement, we want to have a chance to request it from another agency. We want to have that option. If the constitutional questions arise in this bill then they are also present in the section of law that is currently in effect.

Acting Chairman Hammond asked for questions from the committee.

Senator Marbut asked Mr. Niss to explain the constitutional problems.

David Niss said the constitutional problem referred to is not that delegation is a problem. The legislature delegates things to committees frequently and there is no problem with this. It is the effect of that delegation that is the question. Also with the suspension period, it is whether the length of delay is constitutional.

Senator Towe asked Senator Story who would cover the cost of the Economic Impact Statement.

Senator Story felt that some of it could be absorbed by the agency but if necessary we could ask for a supplimental.

Mona Jameson said that the only time an applicant pays for an Economic Impact Statement is under the Major Facility Siting Act. Where the applicant would help pay for the statement has nothing to do with this bill. This bill relates to rule making alone.

The meeting closed on Senate Bill 40.

ADJOURNMENT: The meeting adjourned at 1:02 p.m.

PETE STORY, Chairman

ROLL CALL

STATE ADMINISTRATION COMMITTEE

47th LEGISLATIVE SESSION -- 1983 Date 1/25/83

NAME	PRESENT	ABSENT	EXCUSED	SENATE SEAT #
SENATOR PETE STORY, Chairman	x			45
SENATOR H. W. HAMMOND, Vice Ch	x			34
SENATOR REED MARBUT	x			44
SENATOR LARRY TVEIT	x			33
SENATOR R. MANNING	x			48
SENATOR LAWRENCE STIMATZ	x			7
SENATOR THOMAS TOWE	x			26

Each day attach to minutes.

DATE Jan. 25, 1983

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Mr. & Mrs. F. L. Green		SB 29		X
Jon A. Meredith	DOR	SB 40		X
Becki Smith	Montana Hosp Assn	SB40	X	
[illegible]	LWV of Montana	SB40		X
Andy Poole	Commerce	SB181	X	
Sandra P. Mintyala	Mister M Disposal	SB29		X
Marvin E. Mintyala	Mister M Disposal	SB 29		X
[illegible]	[illegible] Salvage Assn	SB 29	X	
[illegible]	Lewistown Salvage Assn	SB 29	X	X
John [illegible]	Great Falls - Greens Disposal	SB 29		
Wayne Budt	PSC	SB 29	X	
Will Brooke	Mt Stockgrowers/Woolgrowers	170		
Donna Tennison	Helena (City County Sanitation			
Emil Tennison	"			
Sara Parker	State Library Commission			
Pat Underwood	Mont Farm Bureau	170	X	
Mike [illegible]	[illegible]	SB29	X	
[illegible] Romine	Solid Waste Contractors	SB 29		X
Pat Wilson	Montco / Thermal Energy	SB40	X	
[illegible] Wood	Commerce	SB40		X
[illegible] England		SB 40		X
Scott J. Orr	Mont Solid Waste Contr.	SB 29		X
[illegible] D. Clark	Mt Solid Waste Contr	SB 29		X
John Etchemendy	Miss. Cy Sanitation	SB 29		X
[illegible]	[illegible] Disposal	SB 29		
Russ Cater	SRS	SB40		X

(Please leave prepared statement with Secretary)

DATE January 25, 1983

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Henry A. Haye	Wee Haul	SB 29		X
Tim Stearns	NPRC	SB 170	X	
Al Bach	Yellowstone Sanitation	SB 29		X
[illegible] Kelly	Evergreen Disposal	SB 29		X
Dave Palagi	TRI-COUNTY DISPOSAL	SB 29		X
Frank Crowley	Mont. Dept. Health	SB 40		✓
[illegible] E. Foley	[illegible]	29		X
[illegible] E. Foley	Valley Bozeman	29		X
Kent Mollohan	Small Business	SB 181	X	
[illegible]	Dept. of Commerce	SB 181	X	
[illegible]	"	SB 40		
Don Allen	Mt. Petroleum Assn.	SB 40	✓	
[illegible]	[illegible] Chamber	SB [illegible]	✓	
Russ McDonald	Incent awards com.	SB 25	✓	
JOHN LAFAVER	SRS	SB 40		✓
DAVID NISS	ACC	SB 40		
KEITH KELLY	DEPT. OF AGRICULTURE	SB 40		✓
Mona Jamison	Governor's Office	SB 40		✓
[illegible] McIntyre	DNRC	SB 40		✓
SCOTT CURREY	DEPT OF LABOR	SB 40		
Charles Landman	MEIC	SB 40		✓

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

NAME Pat Underwood BILL No. SB170

ADDRESS 502 S. 19th Bozeman, Mt. DATE 25 Jan 82

WHOM DO YOU REPRESENT Montana Farm Bureau

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The MFBF Believes This Bill will correct legislation passed on this subject last session, and we SUPPORT SB170

Patrick R. Underwood

FORM CS-34
1-81

NAME: Wayne Budd DATE: 1/25/83

ADDRESS: 1227 11th Ave

PHONE: 444-2597

REPRESENTING WHOM? M.A.P.I.C.

APPEARING ON WHICH PROPOSAL: SB 21.

DO YOU: SUPPORT? \ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: F L Brown Sr. DATE: Jan. 25-83

ADDRESS: 3341 - 12th Ave South, Great Falls, Mont.

PHONE: 453-7262

REPRESENTING WHOM? Garbage Contractors

APPEARING ON WHICH PROPOSAL: S.B. 29

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? X

COMMENTS: There is no sensible reason for this bill to be enacted. The Garbage contractors should be under the Jurisdiction of the Public Service Com. The Garbage collectors should be recognized as a separate entity of their own, and not a part of the Transfer & Storage association. We should have laws & rules governing our industry as has been passed in the Legislature

H.B. 417

H.B. 418

H.B. 323

March 28 - 1977

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Bill Romine DATE: 1-25-83

ADDRESS: Helena

PHONE: 442-2220

REPRESENTING WHOM? Solid waste Contractors

APPEARING ON WHICH PROPOSAL: S.B. 29

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: ~~Any~~ Deregulation would put many existing contractors out of business. These people have invested many thousands of dollars in equipment etc to provide the service Required of them as a Result of their certificate issued by the P.S.C. Since they are Required to give service, they have had to invest money. However, if anyone can go into competition anywhere, they can easily undercut the existing contractor. Deregulation would cause many more problems than it would solve. There would no longer be any control over service as need, and the public would be hurt.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DENN PENNELL DATE: 1-25-82

ADDRESS: GILT EDGE STAGE, LEWISTOWN 59457

PHONE: 538 3162 5548

REPRESENTING WHOM? LEWISTOWN SALVAGE ASSN

APPEARING ON WHICH PROPOSAL: SB 29

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Ed. ALthoFF DATE: 1-26-83

ADDRESS: 511 East Broadway

PHONE: 538-5114

REPRESENTING WHOM? Lewistown Salvage ASSN.

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

With only one carrier there was no control on Prices or Service

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Tom Schneider DATE: 1-20/83

ADDRESS: Box 716 Helena

PHONE: 442-4600

REPRESENTING WHOM? MPEA

APPEARING ON WHICH PROPOSAL: SB 205

DO YOU: SUPPORT? ✓ AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: DARRYL T. McKENZIE DATE: 1-25-82

ADDRESS: 319 BOYD ST. - LEWISTOWN, MT. 59457

PHONE: 538-3392

REPRESENTING WHOM? LEWISTOWN SALVAGE ASSN

APPEARING ON WHICH PROPOSAL: SB 29

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: OPPOSES THE PSC ~~WAS~~ BEING ABLE TO CREATE MONOPOLIES WITHOUT REGULATION THIS ISN'T TRUE IN ANY OTHER STATE AGENCY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Lyle Manley DATE: Jan 25

ADDRESS: Dept of State Lands

PHONE: 444-2074

REPRESENTING WHOM? Dept of State Lands

APPEARING ON WHICH PROPOSAL: HB 2

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: See written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Presented by Senator Mike Halligan

EXHIBIT 1
State Administration
January 25, 1983

OUTLINE of S.B. 181

SUBJECT:

S.B. 181 IS AN ACT TO TRANSFER THE STATE INFORMATION AND RESEARCH SYSTEM KNOWN AS THE " CENSUS AND ECONOMIC INFORMATION CENTER" (CEIC) FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE.

BACKGROUND:

CEIC WAS A PART OF THE RESEARCH AND INFORMATION SYSTEMS DIVISION THAT WAS TRANSFERRED TO THE DEPARTMENT OF ADMINISTRATION BY THE LAST LEGISLATURE AS PART OF THE REORGANIZATION OF THE DEPARTMENT OF COMMUNITY AFFAIRS. THE DIVISION INCLUDED A NUMBER OF COMPUTER-RELATED SERVICES WHICH WERE BETTER CO-LOCATED WITH THE COMPUTER ACTIVITIES OF THE DEPARTMENT OF ADMINISTRATION.

CURRENT STATUS:

MOST OF THE DIVISION OF RESEARCH AND INFORMATION SYSTEMS HAS BEEN INTEGRATED INTO THE DEPARTMENT OF ADMINISTRATION OR SEPARATED FROM THE DIVISION AND TURNED OVER TO THE SPECIFIC AGENCY REQUIRING THE SERVICES. CEIC IS THE LAST REMAINING PIECE THAT HAS NO STRONG RELATIONSHIP TO THE FUNCTIONS OF THE DEPARTMENT OF ADMINISTRATION.

RECOMMENDATION:

S.B. 181 WOULD TRANSFER CEIC TO THE DEPARMTENT OF COMMERCE, THE LINE AGENCY MOST DEPENDENT UPON CENSUS AND ECONOMIC INFORMATION AS TOOLS FOR DAY-TO-DAY PROGRAMMATIC RESPONSIBILITY. COMMERCE IS THE LEAD AGENCY FOR ECONOMIC DEVELOPMENT AND ALSO HAS SEVERAL PROGRAMS IN COMMUNITY ASSISTANCE WHICH RELY HEAVILY UPON ACCESS TO CENSUS AND ECONOMIC DATA. THIS MOVE WILL

STRENGTHEN MONTANA'S ABILITY TO RESPOND TO THE ECONOMIC NEEDS OF THE 1980'S AND BE MORE EFFECTIVE IN FURTHERING ECONOMIC AND COMMUNITY DEVELOPMENT.

EXHIBIT 1,b
State Ad.
Jan. 25, 1983

TESTIMONY

RE: SB 181. An act to transfer the state information and research system known as the Census and Information Center (CEIC) from the Department of Administration to the Department of Commerce.

The Department of Commerce supports the transfer of CEIC from the Department of Administration to the Department of Commerce for the following reasons:

1. CEIC provides information necessary to Commerce's programs in Community Assistance.

   a. Coal Board impact mitigation program relies on CEIC for census information, designation of impact areas, and analysis of local governments' fiscal capabilities.

   b. Community Development Block Grant Program relies on CEIC for most recent figures on population, housing conditions and income levels as criteria in awarding block grant funds.

   c. The proposed Local Government Block Grant program also has a formula for distribution that relies on the most recent population data available.

   d. Timely access to census and economic data for local communities is crucial to the development of plans and proposals for other specific community development projects, such as the federally funded UDAG or FmHA programs. Commerce has a small technical assistance staff to help facilitate proposals to package local, state and federal funds.

2. CEIC provides information necessary to Commerce's small business assistance functions.

   a. Current demographic and economic information is a central factor in a decision to expand physically or locate in a particular community.

   b. Demographic and economic activity data are central to locating new markets for existing products.

3. CEIC provides information and resources necessary to the formation of sound economic analysis and policy formation.

   a. The data produced by the CEIC is used by the Bureau of Business and Economic Research at the University of Montana to provide a base for economic forecasting at both the state level and for local communities.

   b. CEIC contains a position for a professional economist. This position could benefit the state considerably by being located in the Department of Commerce and playing an active role in coordinating the information produced by other economists across the state.

EXHIBIT 2
January 25, 1983
State Administration

BRIEF IN SUPPORT OF REPEALER SB 170

This Brief is in support of Senate Bill 170 to repeal Chapter 440, Laws of 1981, now codified in 70-30-321 and 70-30-322, Montana Code Annotated.

I.

Statutes to be Repealed

1. 70-30-321, MCA:

> Sale of property acquired for public use when use abandoned - procedure. (1) Whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.
>
> (2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of public sale in a newspaper in the county in which the real property interest is located once a week for four successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

2. Legislative History:

Enacted under Section 1, Chapter 440, Laws of 1981; now codified in 70-30-321, Montana Code Annotated.

3. 70-30-322, M.C.A.

> Option of original owner or successor in interest to purchase at sale price. (1) The owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest in the sale provided for in 70-30-321. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

4. Legislative History:

Enacted under Section 2, Chapter 440, Laws of 1981, now codified in 70-30-322, Montana Code Annotated.

5. Compiler's comments state that Section 3, Chapter 440, Laws of 1981 provided that Sections 1 and 2 are intended to be codified as an integral part of Title 70, Chapter 30, which is the law of eminent domain, and the provisions of Title 70, Chapter 30, the law of eminent domain apply to Sections 1 and 2 of the above-cited statutes.

II.

Why These Statutes Must Be Repealed

The above-cited statutes are the result of special interest litigation and operate to the exclusive benefit of large corporations and public bodies such as The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Burlington Northern Railroad Company, The Montana Power Company, The Mountain States Telephone and Telegraph Company, The Montana State Highway Commission, and others who have acquired private Montana property by eminent domain or otherwise. The statutes are unconstitutional because they are clearly ex post facto legislation which ought not affect existing real property interests which previously have been acquired by eminent domain or

otherwise for public use to date. They ought to apply prospectively only for interests acquired after the date of the statutes' enactments. Otherwise, application of these statutes to existing real property interests which have been acquired by eminent domain or otherwise would result in unconstitutional takings of private Montana property without due process of law. Under common law, when the public purpose is abandoned for which the condemnor previously acquired a real property interest, the real property interest must revert to the condemnee or the condemnee's successors in interest by simple operation of law. These statutes completely abrogate that valuable common law right.

III.

Reversion of Condemned Property
When Public Purpose is Abandoned

It is common law of England, and, therefore, common law of the majority of the states of the United States, that condemnation for railroad purposes or other public purposes vests in the condemning authority only a permanent easement for the public purpose during the continuance of the corporate or public body's existence, and if the corporation or public body abandons use of the property for the public purpose, the original owners of the property or their successors are entitled to take possession of the property. See City of Duggan v. Dennerd, 156 S.E. 315 (1930); Erie Lackawanna Railroad Co. v. State, 330 N.Y.2d 700, 38 A2. 463 (1972).

There are no Montana cases directly on point involving abandonment of railroad rights-of-way or other such rights-of-way which have

Nevertheless, the clear authority under common law in Arkansas, Georgia, Missouri, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, Oklahoma, Tennessee, Washington, West Virginia, and Kansas support the proposition that any property acquired under condemnation or threat of condemnation, when abandoned of the purpose under which the condemnation powers were exercised, reverts to the original owners or owners' successors in interest in fee.

An excellent synopsis of the common law appears in Abercrombie v. Simmons, 71 Kan. 538, 81 P. 208 (1905), where the Court held:

> "An instrument which is in form of general warranty deed conveying a strip of land to a railroad company for a right of way will not vest an absolute title in the railroad company, but the interest conveyed is limited to the use for which the land is acquired, and when that use is abandoned the property will revert to the adjoining owner."

The Court further held that although the deed contained covenants of warranty and although the interest conveyed thereby was designated as a fee, those factors were not relevant nor were they controlling. The facts that the railroad acquired property for a public purpose and later abandoned the public purpose were the crucial facts which triggered the common law reversion. See also Harvest Queen Mill and Elevator Company v. John E. Sanders, et al., 159 Kan. 536, 370 P.2d 419 (1962).

In other words, when your property is taken under eminent domain for a public purpose, and the public purpose is later abandoned, you get your property back.

IV.

The Statutes Take From Private Montana Landowners and Give to Large Condemning Bodies

of common law, but there is no common law in any case where the law is declared by statute. However, where law is not declared by statute, and the common law is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision. See 1-1-108 and 1-1-109, Montana Code Annotated.

The statutes sought to be repealed which deal with the sale of property acquired for public use when the public use is abandoned simply speak to "a real property interest for a public use." Obviously, "a real property interest" is extremely broad language which can be read to include all interests in real property, including easements. As our Supreme Court has held, an easement is a real property "interest protected by constitutional guarantees against the taking of private property without just compensation." City of Missoula v. Mix, 123 Mont. 365, 214 P.2d 212 (1980).

Further, 70-30-321, Montana Code Annotated provides that when any property acquired by public use whether by right of eminent domain or otherwise is abandoned, the condemnee or the condemnee's successor in interest may sell the interest to the highest bidder at public auction. A plain reading of that statute reveals that property acquired by a condemning authority apart from eminent domain may also be sold in like fashion. Thus, if one had granted or conveyed to a public body or corporation an easement for a public use freely or under threat of condemnation, the statute provides that the holder of that easement may sell the same at public auction, even though elementary common property law is clear that upon abandonment of an easement, title to the property servient to the

interest. The law as provided under 70-30-321 and 70-30-322, Montana Code Annotated abrogates that elementary common property law and operates to the clear benefit of large corporations and public bodies who condemn property for public use in the State of Montana or acquire property under threat of eminent domain. Those statutes obviously deny the common law rights of property ownership to Montana property owners who have long been subject to the condemning authority of those large corporations and public bodies.

V.

Conclusion

The statutes at issue are the product of special interest legislation, and operate to the exclusive pecuniary benefit of large corporations, utilities, and public bodies who have exercised the power or threat of power, of eminent domain to acquire vast stretches of private Montana property. In these statutes, independent Montana landowners have been stripped of their common law property rights. The statutes operate to allow those large corporations, utilities and public bodies to sell property to the highest bidder; property which they don't really own to begin with because upon abandonment of the public purpose, the property reverts to the original owner or his successor in interest.

Exhibit 3
January 25, 1983
State Administration

Mr. Chairman and members of the committee my name is Tim Stearns. I work on the staff of the Northern Plains Resource Council. NPRC is a 1500 member state wide agriculturally-based public interest group concerned about energy and resource development and its affects on agriculture.

SB 170 will allow landowners who have had property taken for a public use through condemnation to regain ownership of that property once the public use for which it was taken ends. This a tenent in law since Engli times.

The present statute was adopted in 1981 and I believe its intent was to allow a landowner to match the highest bid on property that was taken from him for a public use. The Highway Department sells property it no longer uses at auction; the intent was to give landowners the right of first refusal at those auctions.

It is our view that property taken through eminent domain should revert to the original landowner or his successor automatically at the conclusion of the public use. He should not be forced to match auction price to return that ground to production. Afterall he has farmed or ranched around the public use whether it be a road or transmission line etc.

NPRC would like to offer the following amendment to make clear how we feel the law should be interpretted.

New Section 70-30-321 If the use for which property is taken ends, the estate taken or the remainder of it reverts back to the person or his successor in interest from whom the property was taken.

Thank you for your consideration.

Exhibit 4
January 25, 1983
State Administration

SENATE BILL 170

New Section 70-30-321

If the use for which property is taken ends, the estate taken or the remainder of it reverts back to the person or his successor in interest from whom the property was taken.

Exhibit 5-a
January 25, 1983
State Administration

SENATOR HAROLD L. DOVER

SENATE BILL 29

Senate Bill 29 addresses a very serious situation that has resulted from the law protecting an unregulated monopoly - namely garbage collectors.

SB 29 is one of several bills dealing with garbage collection this session. There were 3 bills last session that would have provided some control on garbage collection. These were very heavily lobbied and killed. Garbage collectors now have the protection of the PSC to run a monopoly with no control on prices charged, service performed, equipment used, etc.

This bill was drafted because of a serious problem in garbage collection in Central Montana - particularly Lewistown. On December 31, 1978, three garbage companies were bought up by one company in Lewistown. This gave the collector a monopoly in the city with no restraints on costs, service, or equipment. He increased the rates more than many people - especially the business community - thought justifiable. (Example, Hospital from $180 to $580). He felt he was hauling garbage for everyone so got a computer for billing and sent out bills indiscriminately. (Rumor was he used the telephone book to bill everyone). His equipment was in poor shape. (One man quit him because of unsafe vehicles). There were many complaints about his service.

Another garbage collector tried to set up a business in town - but the PSC ruled him out.

1,500 residents representing both collectors signed petitions and many calls were made to the PSC to let in the new collector to work in town.

The PSC had a 3 day hearing in Lewistown on the problem. All the people wanted a new dealer, only 2 opposed at the 2nd day hearing.

The PSC ruled it could not allow the competition and the town was left with one collector with no control on prices charged, equipment used, or quality of work, and many disgruntled businesses and residents. In fact, the comment was made that the Public Service Commission, which was to review the public opinion, had certainly not served the interest of the public in this instance.

The residences and businesses without a collector then formed their own non-profit garbage collection business to gather and salvage their garbage. This has been through the courts and they are still doing the job.

The PSC was able to do nothing to help the public in Lewistown on this issue. They did protect an unregulated monopoly - that did not provide the service the people felt they deserved - and at inflated rates.

SB 29 will correct this problem. It removes the transportation of garbage from the "regulatory" authority of the PSC and puts the garbage collectors in a competitive business.

There is a lot of support for this bill. It may be the best solution to the problem of garbage collection - I'll leave that to the committee. But, I have said to the garbage collectors that I'll give consideration to a House Bill which the garbage dealers feel protects their interests and yet provides for the PSC to have some discretion in allowing competition when considering the needs of a community.

EXHIBIT 5-b
January 25, 1983
State Administration
Sannell

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FERGUS

LEWISTOWN SALVAGE ASSOCIATION, Petitioner, -vs- DEPARTMENT OF PUBLIC SERVICE REGULATION, MONTANA PUBLIC SERVICE COMMISSION, a Department of the State of Montana, Respondents.	*	No. 25177 BRIEF IN SUPPORT OF PERMANENT INJUNCTION AND NOTICE AND REQUEST FOR PRE-TRIAL HEARING

I.
INTRODUCTION

In this case, certain statutory regulation has been enacted in Montana which restricts competition in the garbage hauling business. This section, Section 69-12-314, M.C.A., requires that any entity must obtain a certificate of public convenience and necessity from the Public Service Commission prior to hauling garbage as a carrier for hire. There are no provisions of law which give the commission authority to establish rates for garbage haulers. (Answer, page 1). Thus, in Montana, the conduct of business as a garbage hauler is regulated, although that regulation is incomplete. It is well-established law that under the Supremacy Clause, such regulation which restricts competition is invalid, since it violates the Sherman Anti-Trust Act 15 USC Section 1 (15 USC Section 1).

II.
BACKGROUND

Section 1 of the Sherman Act provides, in its pertinent

"Every contract, combination..., or conspiracy, in restraint of trade or commerce among the several states..., is declared to be illegal."

Under the guidelines established in Parker v. Brown, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943), certain acts and legislation were granted exemption from liability under the Sherman Act. In a series of cases decided since 1943, the courts have delineated the outer perimeters of the "state action" exemption. The case of Lafayette v. Louisiana Power and Light Co., 435 US 389, 55 L Ed 2d 364, 98 S Ct 1123, involved Louisiana laws which granted an exclusive territory to the Louisiana Power and Light Co. The city of Lafayette sued. Louisiana Power defended based upon the "state action" exemption enunciated in Parker v. Brown, supra. The Supreme Court held the exemption did not apply. In so ruling, the Court held that apart from the application of the Parker v. Brown doctrine, there was no broad immunity from liability under the Sherman Act on the part of cities as municipal utility operators, that such entities were "persons" within the Act. Further, the Court held that the "state action" exemption of Parker v. Brown did not automatically exclude states or cities, as a division of the sovereign, from liability. Accordingly, it is only state action by the government entity itself which is exempt. Since the Louisiana Power Company was only operating under the authority of the applicable legislation, it was not immune from coverage under the Sherman Act. The Lousiana Power case was decided in 1978. On January 13, 1982, the Court decided the case of Community Communications v. Boulder, ___US___, 70 L Ed 2d 810, 102 S Ct ____. In the Boulder case, the city of Boulder had given an exclusive franchise to one cable

must be a clearly articulated and enforced state policy which allows state regulation to take the place of competition in the market place. In so ruling the Court re-affirmed an earlier decision with respect to the nature and extent of regulation necessary to pass muster under the state action exemption. The earlier case was California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 US 97, 63 L Ed 2d 233, 100 S Ct 937 (1980). In Midcal, the state of California had attempted to enact a resale price maintenance system which would have affected the pricing of wine throughout the state. However, there was no legislative scheme to enforce pricing. The Court held that the failure to provide for such active state supervision of pricing was fatal.

III.

APPLICATION OF THE LAW
TO THE CASE AT HAND

The principles enunciated above reach the case at hand. Under the Supremacy Clause, the Sherman Act serves to invalidate any state legislation which is contrary. By extension, the interpretations of the Sherman Act given by the United States Supreme Court are entitled to the same effect. Under Midcal, supra, the regulatory scheme in question is invalid, since it contains, by admission, no provisions for pricing. [Such only makes sense. It seems incredible that any regulatory body should feel it has the power to establish a monopoly and yet have no authority over pricing!] Since the regulatory scheme is invalid, enforcement of such scheme is in that sense, "unconstitutional". It is prohibited by the Supremacy Clause.

A second reason exists as to why enforcement of Section 69-12-314, M.C.A., is improper. Montana has enacted what is

Section 30-14-205, which include the creation of monopolies in the transportation of "an article of commerce". As defined therein, an article of commerce would include garbage. Section 30-14-222, M.C.A. specifically provides for injunctive relief. In deciding a conflict between the little Sherman Act and an offending legislative scheme, the courts look to federal decisions under the Sherman Act for guidance. That is, state legislation in conflict with a little Sherman Act will be found prohibited if the same state legislation would have been found to violate the Sherman Act. Thus, it should be held that Section 30-14-205 is invalid under the little Sherman Act, Title 30, Part 14,M.C.A.

IV.
CONCLUSION

In the county of Fergus, the Public Service Commission (P.S.C.) has created a monopoly. (See the Court's Order Upon Judicial Review, Civil No. 25103, a part of the court's file in the present cause, having been judicially noticed previously.) Having created that monopoly, the P.S.C. now tells us that it is powerless to police the pricing or policies of that monopoly. Such a regulatory scheme creates the very practices which the Sherman Act prohibits. Section 69-12-314, M.C.A., and the balance of this chapter, as it relates to the hauling of garbage, is invalid.

V.
NOTICE AND REQUEST FOR PRE-TRIAL HEARING

It is clear that under the Sherman Act, and the little Sherman Act, all persons, companies and entities who have engaged in business in an environment which restricts commerce and trade are liable for damages. The plaintiff herein specifically reserves

and requests that the court schedule, at its convenience, a pre-trial hearing for the purpose of adopting a reasonable schedule for the joinder of any such proper parties defendant. (See Section 30-14-222, M.C.A., et. seq.)

RESPECTFULLY SUBMITTED This 24th day of January, 1983.

K. ROBERT FOSTER

K. Robert Foster
216 West Main
Lewistown, Montana 59457
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail upon opposing counsel of record at his address this 24th day of January, 1983.

K. ROBERT FOSTER

Exhibit 6
January 25, 1983
State Administration

The proposal to deregulate the private garbage haulers in Montana comes at the same time that the American Public Works Association is urging passage of state laws to allow local jurisdictions to establish and enforce control of solid waste flow. In this legislative session, legislation is being introduced to give local municipalities this authority.

Is control of solid waste flow necessary? Should this control rest in the hands of the state or should it be turned over to local jurisdiction? What role can the private sector play in assuring an efficient future and in preserving the 'pristine' quality of Montana?

1. DEREGULATION

The prime argument for deregulation is that the market place will provide the best service at the best rate. This argument ignores the most basic aspect of refuse collection. Collection and compaction are most efficient when they are most nearly continuous events. Two different crews working the same area can never be as efficient, i.e., inexpensive for the consumer, as a single crew providing service to every residence within a well defined geographic grouping.

Unregulated service will undoubtly increase the number of temporarily unemployed, transients and generally improperly equipped individuals who will create unnecessary disruptions in present services and an increase in the litter along our highways.

The American Public Works Association is urging regulation for two reasons:

1. The U. S. Supreme Court decisions with regard to Community Communications Company, Inc. v. City of Boulder, Colorado and Hybud Equipment Corporation v. City of Akron indicate that local governments are not exempt from federal antitrust law when attempting to impose solid waste flow control. The court has recognized that only states and not their local jurisdictions have the authority to impose flow control. They have gone so far as to say that even if the state were to grant local control, they would have to maintain some form of regulation and overseer role.

2. The other reason the American Public Works Association is urging regulation is to be able to ensure a regular flow of waste to enable financing of resource recovery plants.

Deregulation of private haulers at a time when local jurisdictions are seeking regulation will not serve the public interest.

2. Some Basic Economic Facts about Our Industry

Solid waste haulers are large, sealed compaction vehicles. These vehicles compose what economists call an economy of scale on our industry. In order to meet the basic operation costs of such a vehicle, there must be a certain minimum number of customers serviced. Beyond a certain point, the vehicle is exceeding its

capacity and generating costs begin to rise so rapidly that profit decreases and service is interrupted. For each type of vehicle, there is an optional level of operation. There are vehicles designed to be most efficient in varying geographic terrain and population densities.

The most efficient garbage haulers in Montana service a population which is large enough that they can afford to have enough equipment to provide a variety of services and a backup capacity that ensures against any breaks in service.

3. Regulation

The basis case for regulation lies in the fact that regulation could be of public benefit. We need a form of regulation which issues permits based on some formula of population, size, and density and geographic and political boundaries.

The present test of "need and necessity", i.e. 20 households or a contract of at least $5,000 gross/yr is pathetically weak. It resulted in small and part-time haulers who were not large enough to be economically viable. As a result, some haulers have grown while others have sold out. Many haulers now have at least two permits.

Regulation could provide for Montanans:

1) The best possible price and service by insuring haulers of a large enough territory to be economically efficient.

2) Flow control of solid wastes to state approved facilities.

3) An economically viable basis for establishing and enforcing contracts between local jurisdictions and private haulers.

4) A constant incentive to every private hauler to continually upgrade and improve the efficiency of his operation.

4. Rates

For rates to be equitable, they must take into account the amount of wastes, the density of customers and the means of disposal. Most commonly (and fairly), the rates for commercial accounts are based primarily on volume while residential rates are based mainly on geographic density and ease of access. Finally, the disposal site and tipping fee, if any, will result in an additional cost.

Complicated formulas for setting rates more often than not result in higher consumer prices and unnecessary record-keeping. On the other hand, where local jurisdictions are concerned about rates or wish to establish a contract with a private hauler, there should be a mechanism for holding hearings to establish rates for basic services.

5. Municipal of County Utilities

Until the recent district court order in Lewistown, the private haulers were regulated and the local governments were unregulated. This lack of regulation of local government operated utilities

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EXHIBIT 7
January 25, 1983
State Administration

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

Gordon E. Bollinger, Chairman
John B. Driscoll
Howard L. Ellis
Clyde Jarvis
Thomas J. Schneider

January 24, 1983

Senator Pete Story, Chairman
Senate State Administration Committee
Capitol Station

Dear Senator Story:

The Montana Public Service Commission believes strongly that legislation is required to resolve a number of serious problems, which currently exist in the regulation of Class D motor carriers (solid waste disposal). Several pieces of legislation have been prepared to address these problems.

At this time, the Commission supports the following legislation as its preferred solution:

(1) Amend HB 73, sponsored by Representative Schultz with the following language:

> "For the purpose of a Class D certificate, a determination of Public Convenience and Necessity may include consideration of competition."

Such amendment would replace lines 12 - 18 on page two of HB 73.

(2) A provision which would allow local governments to contract for garbage service in the same manner that state and federal government do under existing law. The Commission under that circumstance automatically issues an authority for the length of the contract without a public hearing. HB186 and the proposed Legislative Audit Committee bill would accomplish this requirement.

The Commission concludes that the legislation described above is in the public interest and fairly resolves the existing problems.

However, if HB 73 as amended in paragraph 1 does not pass the House, then the preferred solution would be complete deregulation. Therefore, the Commission

requests this committee to defer executive action on SB 29 until passage by the House of HB 73.

For the Commission,

THOMAS J. SCHNEIDER, CHAIRMAN

JOHN B. DRISCOLL, COMMISSIONER

CLYDE JARVIS, COMMISSIONER

HOWARD L. ELLIS, COMMISSIONER

DANNY OBERG, COMMISSIONER

EXHIBIT 8-a
January 25, 1983
State Administratio

DEPARTMENT OF ADMINISTRATION

PERSONNEL DIVISION

TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 449-3871

HELENA, MONTANA 59620

Testimony of Dennis M. Taylor, Administrator, Personnel Division, Department of Administration presented to the Senate State Administration Committee in support of SB205 on Tuesday, January 25, 1983.

Mr. Chairman, my name is Dennis Taylor and I am the administrator of the State Personnel Division in the Department of Administration and the Chair of the Employee Incentive Awards Advisory Council. I appear before you today in support of SB205 sponsored by Senator Dorothy Eck. This measure simply extends for two years the "sunset" provision in the original act. The measure was introduced by Representative Budd Gould of Missoula last legislative session. The act did not become law until October, 1981. It took time to get the administrative apparatus envisioned by the law into place. Administrative rules were reviewed and adopted. Agency level review committees were appointed and trained in the procedures for review. An extensive effort to inform state employees about the program was undertaken. The Advisory Council was appointed and organized. The program has been fully operational for only 10 months. As you can see from the preliminary information contained in our report to the Legislature, the initial results of the program have been encouraging. First year savings have resulted in $178,000 of actual "hard dollar" cost reduction to the state. Although few awards have been authorized to date, those that have been approved are significant. All we are asking for with SB205 to be granted more time to properly evaluate the effectiveness of the program. By extending the sunset date from 1983 until 1985 you would allow this program ample opportunity to prove its worth. If value cannot be demonstrated then the program will cease to exist in 1985. There are several members of the Advisory Council here today with me. If you have any questions concerning the Incentive Award program, we will be happy to attempt to answer them for you. I hope you will give SB205 a "do pass" recommendation. Thank you for your consideration.

across the nation has resulted in abuses of a presumed monopoly power. In Montana, too, we have cases across the state where municipal and county refuse assessments are set arbitrarily and often unfairly. Regulation by the state of local government jurisdictions will:

1) Allow them to continue to have 'universal' (i.e. every household) service paid for by an annual assessment while,

2) Provide a state overseer to prevent any inequities to the consumers in the manner in which they are accessed.

Benjamin Cohen
North Valley Refuse
and Trash
Whitefish, Mt 59937

EXHIBIT 8-b
January 25, 1983
State Administration

E M P L O Y E E

I N C E N T I V E

P R O G R A M

Dennis M. Taylor
Administrator

Division of Personnel
Department of Administration

January 25, 1983

As of the end of January 1983, the Employee Incentive Awards Program will have been in operation for ten months. In this time, state employees have submitted one hundred twenty suggestion applications. Eighty-seven of these have been fully evaluated. There have been eighty ideas denied awards for various reasons and seven successful suggestions that are expected to result in a total of $200,000 first year savings. Thirty-three applications are still in various stages of the evaluation process.

SUGGESTION APPLICATIONS

Number Received	Number Approved	Number Denied	Number Being Evaluated	Number Being Tested/Awaiting Legislation
120	7	80	31	2

The seven successful suggestions and the savings to be realized by each are described below:

An implemented suggestion for a more efficient Veterans' Affairs Division reporting form warranted a cash award of $25 for Thomas Hamilton, according to the recommendation made by John LaFaver, Director, Dept. of S.R.S. This award and a certificate of recognition was presented to the employee by Governor Schwinden on November 1.

A modification of the grade of material used on low speed, low volume areas of highways, (i.e., shoulders and parking lanes) was suggested by Donald Fallang. Implementation of this proposal resulted in considerable cost savings for the Department of Highways. (On one particular project--the 17 mile long Shelby North and South Interstate recycling project--the proposal resulted in an actual savings of $87,372 or approximately $4,000 on each one-direction mile of Interstate rehabilitation.) A recommendation by the Department of Highways Committee for the maximum award of $500 was approved by the Council and presented to the employee on November 1.

A recommendation for placing a switch on the thermostats of buildings using overhead doors by which the opening of the door would turn the heat off until the door was closed again was submitted by Joe Wayne Finch and implemented by the Department of Highways. This energy saving idea was determined to indicate definite cost savings (in excess of $5,000) and was recommended for an award of $500 which was approved by the Advisory Council. This award and a certificate of commendation were presented to Mr. Finch on November 1.

As a result of Valerie A. Newton's suggestion, an agreement was made for SRS to utilize space within the Livingston Job Service Office as of May 1, 1982. This arrangement saved $750 per year for SRS and offset the rental amount for DOLI the same amount. The Advisory Council approved a cash award in the amount of $150, based on 10% of the hard cash dollar savings to the two departments for the first year. Each of the Departments will provide $75 toward the award; it will be presented along with the certificate at the next awards presentation ceremony (as yet, unscheduled).

An application submitted by a Department of Fish, Wildlife and Parks employee, John C. Cada, suggested that telephone interviews of resident and non-resident hunters be used as opposed to the questionnaire mailings previously used. The procedure was implemented successfully by this employee and resulted in a saving to the State of approximately $36,000. An award of $500 has been approved by the Advisory Council at the recommendation of the DFWP and will be presented to him at the next ceremony.

Two applicants, William Spracklin and Gilbert Paulson, jointly submitted a suggestion for state-wide use of post-straightening equipment rather than discarding bent delineator/sign posts. Said devices (3) have been constructed and are presently being used by maintenance crews. Implementation of this suggestion has resulted in the savings of approximately $55,000. The Advisory Council approved an award of $500 as recommended by the Department of Highways Committee.

Donald R. Taylor's suggestion for a steel tripod to be constructed and used to provide a stable alignment site for small survey crews was evaluated by the Department of Highways Committee and found to provide limited savings to the State, therefore, it is the Committee's recommendation that $25 be awarded to the applicant. The Advisory Council approved the award to be presented at the next ceremony.

Costs of the Incentive Awards Program are summarized in the following table:

SOURCE	PERSONAL SERVICES		OPERATING COSTS		TOTAL
AGENCIES	$ 9,400.		$ 300.		$ 9,700.
CLASSIFICATION BUREAU	$ 600.		- -		600.
ADVISORY COUNCIL	$ 3,100.		- -		$ 3,100.
EMPLOYEE BENEFITS BUREAU	$ 6,900.		$ 1,700.		$ 8,600.
T O T A L S	$20,000.	+	$ 2,000.	=	$22,000.

All costs have been absorbed by the respective agency budgets. Personal service costs include salaries and benefits. Operating costs mainly consist of travel, printing and mailing expenses. It is expected that future personal services costs will depend on the number of suggestions evaluated and also on the increases to salaries and benefits, while operating costs can be cut in half as these figures represent, for the most part, the start-up costs.

PROGRAM COSTS/SAVINGS EVALUATION

FIRST YEAR SAVINGS FROM SUGGESTIONS	ADMINISTRATIVE COSTS* PERSONNEL DIV/ADV COUNCIL	ADMINISTRATIVE COSTS* AGENCIES	NET SAVINGS FIRST YEAR
$ 200,000	$ 9,700	$ 12,300	$ 178,000

*Costs include personal service, printing and mailing costs which were absorbed by respective agency budgets.

The savings realized in the first year ($200,000) less all absorbed program costs ($22,000) represent the net benefit of the program to date ($178,000).

EXHIBIT 9
January 25, 1983
State Administration

January 25, 1983

To: Senate Committee on State Administration

From: Russell E. Cater, Chief Counsel, SRS

Re: SB 40

Administrative rules on the average require three months of analysis and preparation time. An additional three months is required for processing by the Secretary of State, publication in the Montana Administrative Register (MAR) and time allowed for hearings and the receipt of public comments. SB 40 provides that the Administrative Code Committee, a standing committee of the legislature, can halt executive branch rulemaking for six months. This additional six month halt of agency rulemaking by a standing committee is functionally a veto for that period.

A six month delay, or any major delay, in agency rulemaking can be very costly for big programs like Medicaid. If the state is out of compliance with federal regulation, it is subject to fiscal penalties or a lawsuit. For example, SRS published an economic impact statement (EIS) in MAR, Issue No. 9, 1982, pertaining to Medicaid reimbursement for nursing homes. (It was essential that the rule, if adopted, be effective on July 1, the ending fiscal cost reporting period for many providers.) The state would have lost $393,353 if the rule was not adopted on schedule. Another example is a delay in the adoption of our Low Income Energy Assistance rules. This delay would have prevented needy Montanans from receiving federal money to pay their heating bills during the winter.

SB 40 creates a constitutional separation of powers problem. Only the whole legislature, while in session, can pass bills halting executive branch regulations when they are based on authority given by the legislature. A standing committee has no such power.

EXHIBIT 10
January 25, 1983
State Administration

Testimony of Keith Kelly, Director, Department of Agriculture

before the Senate State Administration Committee
Pete Story, Chairman

on S. 40, "An Act to Generally Revise the Law Relating to Statements of Economic Impact of Proposed Administrative Rulemaking."

Mr. Chairman and members of the Committee, I am Keith Kelly, Director, Department of Agriculture. I appear to present testimony from the viewpoint of an administrator of a rule-making agency, and to bring to your attention certain issues raised by S. 40 which do not appear to be adequately resolved by the language as now written.

Our concern stems from the language which authorizes the Committee to make the preparation of an economic impact statement mandatory, with no accompanying statutory recognition for economic impact analysis which may already have been entered or completed under the Montana Environmental Policy Act. That Act, and the uniform agency rules adopted to implement it, for the most part include most if not all the areas of focus required under S. 40.

As a case in point, I would refer the committee to the Department of Agriculture's proposed adoption of rules restricting the sale and use of Endrin, in March of 1982. At that time my predecessor, Gordon McOmber, determined it necessary to do a preliminary environmental review under MEPA, the completion of which triggered an Environmental Impact Statement based on certain conclusions as to the potential economic impact on the state's producers and this agency itself.

During that process, your Administrative Code Committee, in recognizing the potential economic impact of the rules, but further recognizing the possibility of duplication of such impact assessment under the EIS if that Committee were to also request an economic impact, advised the Department that it would not require an economic impact statement if the Department did an environmental impact statement under MEPA.

Our recommendation to this committee on S. 40 would be to codify the position of the Code Committee on the endrin rules, by inserting language which would assure the agencies that the economic impact requirement would not apply where the agency had completed, or was in the process of completing, a MEPA review which in fact addressed economic issues as required.

If this Committee is not satisfied that the MEPA process addresses the economic issues to the extent envisioned by S. 40, then perhaps amendments to that Act or agency rules should be addressed to accomplish that purpose, accompanied by our recommendation in this bill so that we may avoid the possibility of needless duplication of agency effort and expense.

Respectfully submitted,

Keith Kelly — Date
Director, Department of Agriculture

EXHIBIT 11
January 25, 1983
State Administrati

TESTIMONY OF THE DEPARTMENT OF STATE LANDS CONCERNING SB 40

BEFORE THE SENATE STATE ADMINISTRATION COMMITTEE

The Department of State Lands opposes SB 40 because it would add to the cost of adopting rules, delay the adoption of rules and is unnecessary.

The bill would substantially expand the information required from an agency when a rule is being adopted. Providing this information would require detailed economic analysis which would be costly in terms of agency resources and staff time. The agency could be using those resources on much more beneficial and necessary programs.

The bill would also delay the rule making procedure which is already time consuming. By adding six months to the time necessary to adopt a rule, necessary agency actions, many of them mandated by the legislature, would be suspended. This would be to the detriment of those interests which the legislature was seeking to protect when the rule making authority was originally granted.

A further provision is that SB 40 allows the committee to designate which agency is required to submit the economic impact statement. It would be preferable to require the agency which proposed the rule to prepare the statement. As the bill now reads, the Department of Natural Resources could propose a rule and the committee could require the Department of State Lands to prepare the statement.

It must be remembered that all rules adopted by state agencies are adopted to implement legislation. The rules themselves can not expand the economic impact of the legislation it implements. If a rule were to do so, it would be declared of no effect. It is the legislation, therefore, that creates the economic impact.

In addition, many of the rules adopted by state agencies must be adopted to implement federal guidelines. For instance, the Department of State Lands administers strip mining legislation which is mandated by the federal government. If the department did not adopt certain rules, then the federal government would step in and do it for us. It would not make any sense to incur the expense of preparing the statement; and to delay for six months a rule which must be imposed either by the state or the federal government in any event.

Under Section 2-4-405, MCA as it currently reads an agency may already be required to submit data on the economic impact of proposed rules. Under the bill, agencies will be required to perform a costly, time consuming, and complex procedure which would add little or no protection for those persons affected by rule making. The proposed procedure would simply serve to hinder agency action without providing corresponding benefits. For this reason the Department of State Lands opposes the passage of SB 40.

Exhibit 12
January 25, 1983
State Administration

TESTIMONY OF JON A. MEREDITH, ADMINISTRATOR,
DEPARTMENT OF REVENUE, LEGAL & ENFORCEMENT DIVISION
ON SENATE BILL #40

"An Act To Generally Revise The Law Relating To Statements Of Economic Impact Of Proposed Administrative Rulemaking; Amending Sections 2-4-305 And 2-4-405, MCA, before the Senate State Administration Committee on 1/25/83.

SB #40, if passed, would adversely impact every state agency. As you know, Section 2-4-405, MCA, already provides for an economic impact statement. SB #40, however, sets forth eight very detailed items (instead of three) which must be included in the economic impact statement and which will make the cost of preparing the statement exorbitantly high. Such is the case because agencies will be forced to spend an inordinate amount of time and money researching and preparing the statement.

The Department of Revenue would be especially hard-pressed to analyze every single effect a proposed rule might have. For example, in the area of withholding tax regulation the department would have to consider the impact a rule would have on every business operation in Montana employing help. Such research takes time and effort and SB #40 would allow only three months to complete the statement. Also, in some cases it would be extremely difficult if not impossible to determine the economic impact of a proposed rule and SB #40 eliminates subsection (3) of Section 2-4-405, MCA, which allows an agency to set forth a reasonable explanation of why it is impossible to determine the exact dollar impact.

SB #40 also allows the Administrative Code Committee to withdraw its request for an economic impact statement at any time. This action would hardly be fair to an agency nearing completion of its statement at the time of the withdrawal. Query: Who, at that time would have to bear the cost of the statement preparation to date?

There are several reasonable alternatives to this bill.

1. Leave the statute the way it is since an economic impact statement is already adequately provided for.

2. Because of the costs involved, a unanimous request for an economic impact statement from the

Administrative Code Committee might be required. The ACC would pay for the cost of the statement, especially if they withdrew their request after the statement research has been initiated.

3. Leave parts (a), (b) and (c) of subsection (1) of Section 2-4-405, MCA, the way they are. In other words: eliminate the last five more detailed requirements.

4. Support a somewhat modified SB #45, which requires a demonstration of reasonable necessity in the rulemaking record and thus sets out a far more rational method of insuring responsible rulemaking.

JAM/ilb

EXHIBIT 13
January 25, 1983
State Administration

Testimony on SB40

By Department of Fish, Wildlife, and Parks

The Department of Fish, Wildlife, and Parks wishes to register its opposition to SB40 which will require an economic impact statement on any proposed rules upon the request of five members of the Administrative Code Committee.

This bill raises a number of legal questions and financial questions.

First, the bill raises some serious constitutional questions on the issue of separation of powers. Such a bill would involve the legislature in the daily administration of executive agencies. While the legislature certainly has the power to prescribe the boundaries of our authority, it is not constitutionally contemplated that the legislature will act, through a committee, as a decision-making directorate of the agencies. That is a function of the Governor's Office.

Further, from a financial standpoint, this bill could enormously increase the cost of government. Because it contains no deadlines for when the committee can raise objections, this leaves the way open for late decisions by the committee which might require a complete repetition of all the steps taken by the agency to that point. Thus, there should be some deadline for when the committee could raise its objection.

Further, there is no indication of how such studies will be funded when requested by the committee. Studies could be enormously expensive both because of their duplication and possibly because of the scope of the request by the committee. As a result, necessary regulation may be held up, and in some cases perhaps completely killed by such required activity.

Finally, the vast majority of the regulations passed by state government do not occasion any significant financial demand on the parties being regulated. Nonetheless, the bill would allow the committee, without any specific guidelines as to what would constitute an economic impact sufficient to require a statement, to decide when the statement will be required.

Thus, there is the possibility that even agency rules which have no impact could be forced through such scrutiny, needlessly increasing the cost of government.

For the foregoing reasons, the Department of Fish, Wildlife, and Parks opposes the passage of SB40.

STANDING COMMITTEE REPORT

January 25, 19 83

MR. PRESIDENT

We, your committee on State Administration

having had under consideration Senate Bill No. 205

Respectfully report as follows: That Senate Bill No. 205

DO PASS

PETE STORY
Chairman.

STATE PUB. CO.
Helena, Mont.

fc