#24

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 10, 1981

SUMMARIES OF

HOUSE BILL 434 -

HB 434, introduced by Rep. Dozier, validates all Class D motor carrier licenses issued since July 1, 1977, that have not already been cancelled by the Public Service Commission. A Class D carrier is licensed to pick up and transport garbage and other waste. The Class D licenses will continue to be valid until cancelled by the commission for cause.

HOUSE BILL 448 -

HB 448, introduced by Rep. Nordtvedt and others, revises regulations pertaining to insurance companies. Electronic machines and other office equipment and motor vehicles may be included in assets up to 1% of admitted assets if depreciated over a period not longer than 10 years. Goodwill, trade names, and other intangible assets are excluded from listing as assets in the financial statement. Valuation of single premium life insurance policies issued after July 1, 1981, shall be at 5-1/2% interest. The bill also prescribes methods for valuation of debt securities, for correction of deficiencies in reserve deposits, for investing in the stock of a subsidiary, for investing in real estate mortgages or in real estate, and puts a ceiling of 6-1/2% on the interest to be used for single premium life insurance cash surrender values.

HOUSE BILL 485 -

HB 485, introduced by Reps. Hemstad and Meyer, provides a penalty of 10% plus 10% interest for the breach of a surety agreement. In addition, a surety may be subject to additional penalty imposed by the district court, as the judge sees fit, if the surety refused "vexatiously or in bad faith" to preform or pay the obligation.

HOUSE BILL 487 -

HB 487, introduced by Rep. Quilici and others, allows the Public Service Commission to set rates for Class D motor carriers, garbage haulers.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

The Business and Industry committee was called to order by Rep. Fabrega, Chairman, February 10, 1981, in room 129, Capitol Building, Helena at 8:00 a.m. All members of the committee were present. Bills to be heard were HB 448, 434, 485, 487.

HOUSE BILL 448 -

REP. KEN NORDVEDT, Bozeman, chief sponsor of HB 448, explained the underlying economic purpose of this bill is to allow Montana insurance companies to be more competitive with out-of-state insurance companies. Good will is basically the difference between market value of a concern less its tangible assets.

In Montana an insurance company that resides in Montana must take some of its assets and deposit them with a state entity - in most states that is not the case. They have certain responsibility requirements, but they retain physical control over them. When interest rates were low, insurance companies acquired some bonds at low interest rates. They may be at 75-80% of par value, and they have to be valued at their lower price rather than the purchase price. To mark down fixed dollar securities to market is really not necessary for the insurance company because their liabilities are shown in dollars. In order to put Montana insurance companies on the same footing as other insurance companies in other states, they could be valued at their purchase price.

Insurance companies would be permitted to use a higher interest rate in computing the cost of single premium life insurance policies by raising the rate to 5-1/2%. They can charge less if at a higher interest rate, and it will build up faster.

One section deals with limitations on certain kinds of stocks acquired by insurance companies that need the commissioner's consent. This section would free them from certain requirements of consent.

Another section allows for changes in the stocks of subsidiaries which may be involved by allowing a Montana insurance company subsidiary to be a non-Montana corporation.

Page 17, line 8, strikes out restrictions and would allow the insurance company to participate in first mortgages which means you take a part of a first mortgage along with other participants. It would also allow an insurance company to acquire wrap-around mortgages which would allow an insurance company to give a new mortgage but keep the first one on at the advantageous interest rate it carried, and add on the more expensive mortgage.

A fraction of the companies assets that could be in real estate would be increased from 5% to 15% - he said 10% would be acceptable. Page 20, line 14 calls for increasing the total real estate owned by

insurance companies from 10% to 25% (he asked that the 25% be changed to 15%). This would allow domestic insurance companies to be more competitive with out-of-state insurance companies doing insurance buisness in Montana. It is important domestic companies be allowed to compete on as equitable basis as are out-of-state companies.

HERB RICHARDS, President of Life of Montana Insurance Company, at Bozeman, and the subsidiary company Great Western Life of Bozeman, spoke on behalf of both companies. There are 400 life insurance companies licensed to do business in Montana - 188 life insurance companies in the U.S. Life of Montana is the only truly active life insurance company in Montana. Great Western was formed by Life of Montana. Glacier Life was merged in. Montana National is owned by a company in South Dakota that wants to sell and get out of Montana.

Out of $100 million of life insurance premiums collected in Montana each year, 2-3% stays in the state. Their company is putting money back to work in Montana, but need some help in order to be competitive with out-of-state companies.

Refer to his EXHIBIT A which he meticulously explained to the committee members.

The Montana requirement of physically having control over the securities of a domestic insurance company causes problems because in order to work with their securities they have to come to Helena to do so. Montana also tells you how to value your securities - other states having a deposit requirement (there are 3 that do) don't figure their value as Montana does, and they need relief from this. Section 501 has been stricken after meeting with the insurance department.

They think good will should be an admissible asset. They want to increase the interest rate allowed on a single premium life insurance policy from 4-1/2% to 5-1/2% which would allow for a lower rate of premium for the consumer and the policy would accrue a greater cash value quicker.

Montana does not allow a company to own or control another insurance company without the commissioner's consent. They want to have 10% of a company's assets allowed to be in real estate. They want to have a subsidiary not necessarily a Montana company, and that there can be more than one subsidiary. They would like to participate in mortgage loans, but Montana laws require senior participation for domestic companies. They feel wrap-around loans are advantageous. They are interested in the opportunity to enter the energy field, however, they withdrew this provision although they feel there are some real opportunities in this area.

They would like to be able to pay more than 6% for borrowed money, since interest rates are much higher and they are unable to borrow at 6%. Out of 9 casualty companies, 2 that are primarily owned in Montana have had need of some financing and have gone the route of surplus debentures. Some states have suggested that domestic companies be allowed to have

preferred stock, so are asking that the provision for having common stock only be stricken out. This bill would allow Montana corporations to be in compliance with Montana insurance codes and be on a par with out-of-state companies.

J. H. MELVILLE, Vice President of Life of Montana, Bozeman, supports HB 448 also. The good will item is covered by the rules for valuing subsidiaries that the National Association of Insurance Commissioner puts out so they are asking to use the same rules as the big guys use. The raise in the interest paid on policies is allowed by about half the states. As far as the number of consumers who have this lower price available to them, they are in the majority now.

JO DRISCOLL, Chief Deputy Insurance Commissioner, did sign in as an opponent, but a great many of their objections have been removed by the amendments offered. Their office has no objection to the interest rates being raised on single premium policies, but have questions on valuations.

They are concerned with wrap-around mortgages in case of liquidation it might be difficult to get money out. The reduced percentages requested for real estate are acceptable, and still with the commissioner's consent. They are a little reluctant to remove all stops.

OPPONENTS:

ED SHEEHY, Montana Association of Underwriters, opposes HB 448, saying many of the laws were just put in in 1979 session, and they are reluctant to change them again so soon. In asking for deposit requirement to be removed, the reason for the request is not given. The Legislature spells out requirements that those deposits are there for the protection of people who are depositors. Some objections have been removed by the proposed amendments, but if it comes out in its present form, the Association would have to strongly object to it. Life of Montana is competitive with other insurance companies now. Would ask that you refuse this bill.

Other persons opposing HB 448 are Larry Petty, Helena, Montana Association of Life Underwriters; Valencia Lane, Insurance Department, Helena; Terry Meagher and Jo Driscoll (amendments have somewhat changed her position) Insurance Department; Roger McGlenn, Industrial Insurance Agents of Montana, Helena.

QUESTIONS:

Life Underwriters are licensed insurance agents, and they also sell Life of Montana insurance. Sheehy thinks Life of Montana and Great Western are competitive now, and is not sure HB 448 would give them any great advantage. Richards said they are in the minority as far as sheer numbers goes in comparison to other company's agents. They are not asking to be competitive with many of the companies. He doubts if any companies not domiciled in the state have any deposit requirements as does Montana. They do not treat securities the same as Montana does - they really can't live with this provision.

The present law prohibits the inclusion of good will as an asset. Adding the words "by an insurer", a subsidiary could be included. Richards said the change from 4-1/2% to 5-1/2% would increase the cash value of the policy and lower the premium to the policy owner because the interest being paid is a little higher. If the company income is greater, the policy may pay dividends. Insurance department agreed the 6.5% interest rate is outdated, especially since usury limits have been removed. The cap was put on those interest rates to prevent cycling of assets and manipulating of assets by holding companies throughout the states rather than investing premium capital in the form of stock. An insurer wishing to increase its equity section would record in the equity section rather than in the liability section. Repayment on equity must be in the form of reserve and at that time they were allowed 6%. If there were no limitation on that, there may be a tendency to invest capital in insurance companies in this form and take out large sums in the form of cash rather than in the form of stock. This 6% figure had been in there since 1939.

The assets of all companies, not just the domestic companies, would be valued the same - on market value. Other companies are usually valued on their market value of securities. These are assets that could protect against future liabilities. The National Association allows valuations considering length of time held and liability, their purchase value, and in certain cases they allow them to be valued at amortized rates, and in other cases they require that they be valued at market.

Meagher, insurance department, advised the NAIC doesn't always allow good will but the evaluation committee does publish a valuation booklet and most of the bonds in it are valued at market. They would prefer for the deposit requirement values in Montana to be entirely amortized or book value. The bill provides that whatever the NAIC provides as valuation, is our means of valuation. Competition worked under that rule.

Rep. Nordvedt closed saying HB 448 would permit deposits of assets of a domestic insurer no longer be valued at market, but would be amortized. It would slightly increase real estate values that could be owned; would allow a domestic insurer to be a participant in secondary mortgages and to engage in wrap around mortgages; would increase from 4-1/2% to 5-1/2% the guarantee of the earnings of insurance policies so policy could be sold at a lower premium. This bill would put domestic companies at a more fair competitive advantage.

HOUSE BILL 485 -

Rep. Andrea Hemstad, District 40, Great Falls, chief sponsor of HB 485, offered an amendment to this bill which amends 28-11-411. Present law provides that a surety is not liable beyond the expressed terms of his surety contract. The surety as a general rule has payment obligations only when the person who has defaulted or breached the former contract is covered by the surety.

JACK LEWIS, an attorney from Great Falls, has been on both sides representing sureties and opposing them. It has been his experience that a bill of this nature should be considered. The problem that seems to come up very often and periodically is that under the present statute it in essence places a ceiling or a limit on the obligations of a surety and if it is clear that a surety should perform or pay for any breach or default, and they do not do so because they can obtain more interest from investments than they are allowed under the law, the person who is supposed to be insured, doesn't get covered. Sureties are beginning to refuse to pay obligations of a surety.

JO DRISCOLL, Chief Deputy of the Insurance Department, said they have had a couple of problems with this sort of thing. Need to know who determines what the damages are so they can make some valuations.

OPPONENTS: None

QUESTIONS:

There is a question of actual damages. They can be determined by a jury or a non-jury case. Title 28 relates to court cases for sureties, guarantors, and indemnators. "Vexatious" is a broad term used in the legal field. It means to take a position without justification with the intent to vex. This term might not be necessary to be there in view of the fact that the term bad faith is in there.

This would apply when a contractor defaults and the surety refuses to pay or perform. Lewis said it would apply in other instances also.

Rep. Hemstad closed saying HB 485 would allow for a 10% penalty plus 10% interest to be charged in addition to what is owed on the surety and would provide some stimulus to make sureties live up to their obligations.

HOUSE BILL 487 -

REP. JOE QUILICI, District 84, Butte, was asked by the Public Service Commission to submit HB 487 which would allow the PSC to fix rates for Class D carriers if it is in the best interests of the public. The Class D provision was not carried forward in this statute and so and so the PSC has no jurisdiction over garbage haulers. HB 487 would give the PSC permission to set rates whereby carriers could not charge more than the rates fixed by the PSC.

WAYNE BUDT, Montana Public Service Commission, Helena, supports HB 487. His testimony, EXHIBIT A, explains their position.

BILL OPITZ, Executive Director for the Public Service Commission, said all 7 members have endorsed this concept of rate regulation for garbage haulers. HB 142 would have interjected competition into the trucking industry, but there has been a franchise granted in the trucking industry and interjecting too much competition would be bad.

OPPONENTS:

NEIL UGRIN, a lawyer from Great Falls, representing the Montana Solid Waste Contractors feels HB 487 is inoperable. He asked if it provides for regulation, and do they intend to regulate all rates or is this going to be an "as need regulation"? If it is going to be full regulation, then it should be given to this committee and the public. He can't speak for the PSC, but the people he represents have had problems in previous years. He doesn't think HB 487 says what it means, and they oppose that portion of it. They do not oppose the concept of putting reasonable ceilings on what people can charge.

LESTER WILSON, Havre, Bitterroot Disposal Service, have fear of this bill because they don't know what it means. If they are going to fully regulate them, they would like it to say they are going to fully regulate and if they are going to step in when a case of gouging occurs, they are all for that, but have yet to find a case of gouging. They don't oppose if this is to put on a ceiling. If this is a case of getting back at you for past things that have happened, we are going to oppose this.

WILLIAM L. ROMINE, Helena, representing the Montana Solid Waste Contractors Association, supports HB 487. Mr. Budt says there are problems but they have no power to correct. He hasn't said whether there are problems that say rates are too high. He questions the meaning of the bill - Class C carriers are not the same as Class D. He thinks the bill is vague as to when the triggering for regulation comes in. There is a distinct difference between Class C and D carriers. He thinks gouging correction should be on a case by case basis. See his testimony attached EXHIBIT B.

CHARLES KELLY, Kalispell, Evergreen Disposal, said if they get a complaint because of gouging for one company and there are three, will they regulate all three or just the one doing the gouging?

FLOYD PALAGI, Green's Disposal, Great Falls, said the Montana Association's intent and goal is to police themselves. If they charge too much, people won't pay it. Garbage is different, and they would have to be thrown back into Class C. Everyone has competition and it regulates itself. This whole association is for keeping a clean act and not ripping everybody off. He has several competitors, one of which is Great Falls. They don't have any regulations. If somebody complains about his rates and he has a ceiling on his rate, what happens to him in comparison with Great Falls. He feels he can work his rates and compete.

BEN COHEN, North Valley Refuse, Whitefish, concurs with everything that has been said. He finds himself and most other haulers are operating at the point of wanting more business rather than raising rates. He would rather haul a full truck load at $2 rather than $3 a yard. If someone set his prices so he would get a fair rate of return, he would get priced out of the market.

In answer to a question about how much competition there is in the business now, Mr. Ugrin said there is some competiton. Great Falls has 3 or 4 plus the city. In every area where there is a local government, local government is a competitor. Several in Helena. All these territories don't overlap. Billings has 3 and preempts private enterprise from going into certain areas. In Great Falls, the several haulers haul in various areas without any hard and fast discrimination.

TERRY ARCHAMBEAULT, T & R, Inc., Glasgow, said if he didn't keep his rates low, the city will go into business.

The City of Whitefish competes with a tax assessment and if a business opts to use another service, they are still taxed by the city. He feels he has unfair competition for a service they do not receive. Every city customer he serves is being taxed and assessed for a service that is not received. There is a separate city assessment for refuse collection that everyone pays.

Mr. Wilson said Glasgow has chosen to contract with him and set a fair price where everybody in that area is under that. This is the way the majority of small towns have done this and it is advantageous to him and to the city. He hauls for 45% of the people in Darby. His rates are a little higher because he has only so many customers and it costs that much to go get it but he has never had a squack. The rates for a single residence are $6 per month.

Budt said there are some cities and counties that do have refuse districts and do collect fees. It is up to the city and county. If there is a garbage hauler in that area, and the city goes into the business, they have to give him five years notice and buy his equipment. If somebody comes in for a brand new authority and they try to base that on the fact that they are being gouged, the rates do not come into the new authority. The rates are not used as reason for another authority. Some type of regulation as before the 1977 law would have to set out whether they are a common carrier or contractor. If other common carriers are not regulated, they can serve as many people as they want without regulation. The PSC can go out and investigate and if there is a problem then the PSC could set rates. It is not like they are going to call him up and say we are going to raise your rates or lower them.

One problem was raised when the garbage hauler in Bozeman raised his rates from 50¢ cu.yard to $2 per cu. yard. The difference between Class D (garbage haulers) and Class C is that they work under a certain number of contracts with a certain number of people.

HB 487 gives the PSC the authority to have a rate-making hearing and then establish a rate if there are complaints. That is the way it is done now for Class A or B carriers. Some Class C carriers don't have set rates. For a rate making hearing, the books of a company and records would be called in for review, and if it falls into guidelines set up for

set up for other carriers, the PSC looks at his rates comparing them with other places in the state, and as far as cost, the Commission would do the audit. At a hearing, they could protest the rates. If his rates get out of line, he will have to go and defend his stands at that time. Although there may be a lot of information on rates, the PSC can't take into consideration as to whether another carrier is necessary.

In answer as to whether a carrier would have to pick up garbage for someone who didn't pay for the service, Budt said that right now they are under an obligation as a common carrier and they would have to pick up the garbage anyway since common carrier obligation extends to these carriers as well. However, if someone complains and the PSC found out he hadn't paid for six months, they wouldn't get too upset if he were cut off. That's part of the monopoly privilege. Budt advised the PSC doesn't have any territorial authority when it comes to a city. He didn't think rates would have to be set the same for every place since there are different types of service.

DALE ADAMS , Plentywood Sanitation Co., Plentywood, hauls for people out 20 miles when the government closed down a dump. He lets people come up with a price for hauling per month, which was only half of his costs. The PSC has not come up and said this account needs $9 per month. Budt said they have no comparison rates.

Rep. Quilici was not present to close.

HOUSE BILL 434 -

REP. ROBERT DOZIER, District 61, Billings, introduced HB 434 at the request of the Public Service Commission. The problem is that in 1977 a law was implemented for the Class D carriers which basically included garbage haulers; the PSC had about 90 days in order to implement the certificates and about 330 certificates at that time and they realized they couldn't get out to all of them to inspect them in 90 days and so they ended up issuing 120 Class D certificates. This went along fine until one was challenged in the court saying you didn't do this right - you didn't get enough information and they said you will have 120 coming back in so the judge said to go to the legislature. All carriers were asked to submit all data. The court found the data was insufficient and so now there is a question as to whether any of the 120 certificates are acceptable. The statute has expired and now they don't have the ability to require information so the Legislature is being asked to declare all Class D carrier certificates to be valid to clear up the cloud, otherwise there are 120 Class D carriers could be declared invalid or may have to go to court to clear up the cloud.

WAYNE BUDT, PSC, explained the 1977 law basically said if you show business records to the Commission, we will issue a Class D certificate.

His testimony, EXHIBIT A, explains their position.

BILL OPITZ, PSC, said five commissioners endorse the concept of grandfathering. If a certificate is going to be questioned, and the PSC will have to say it is our fault, there is no way we can go back and correct that.

OPPONENTS:

WILLIAM L. ROMINE, Montana Solid Waste Contractors Association, Helena, opposes HB 434, saying the PSC did not do its work properly. His testimony is attached. This bill will say that if you don't use it, you won't lose it, so someone who has a certificate from 1977, even if he hasn't used it, will have a valid certificate until 1983 and it cannot be protested before 1983.

NEIL UGRIN, Montana Solid Waste Contractors Association, Great Falls, opposes HB 434, saying for years people have been hauling garbage under a variety of licenses. They have obtained certificates just by showing they have been in the business. He felt the 4-month period allowed the PSC would have been long enough to do a thorough study of the haulers who were actually hauling garbage and issue appropriate certificates. They could have had an additional 90 days. The Legislature intentionally made it easy for people to get a license. It would have been easy for haulers to get information.

Ugrin passed out a copy of the information request the PSC sent out to the 330 issues outstanding at that time. EXHIBIT B. Some people got certificates by returning the questionnaire and sold them. He was told these certificates are now being marketed and are enticing outsiders into coming into Montana and being in competition with persent haulers. He handed out EXHIBIT C - a Memorandum and Order from the District Court - and explained the situation.

He feels the PSC did not follow the law and the judge told them to back up and start over - have been in an adversary position with the PSC ever since then. We are continually litigating with the regulatory agency. They want to remedy this situation by doing it the way it is supposed to have been done.

This bill doesn't even purport to have any benefit to the public - it is a cover-up of the error the PSC made.

GARY M. ZADICH, Montana Solid Waste Association, Great Falls, opposes HB 434. See EXHIBIT D for a copy of the 1977 law he left with the committee. There are now 50 carriers who now have authority that they never had at any time; 40-50 certificates have been given to people who never hauled garbage at any time. He feels there is a better remedy than HB 434. Hopes the bill is refused because the PSC had the opportunity and was implored by our association to do it the right way, but did not take advantage of this in an attempt to avoid it - not for any public good, but for the benefit of themselves.

BEN COHEN, proprietor and operator of North Valley Refuse, Whitefish, is strongly opposed to this legislation. See EXHIBIT E for his testimony in connection with his garbage hauling problem. He feels the result of the PSC legitimized more haulers than necessary. All of them would rather increase the amount hauled rather than increase prices. Big Mountain resort could be sold to a conglomerate who would compete with several other present haulers. This is not a good piece of legislation. Suggested Legislature tell the PSC to go back and redo the certificates.

SCOTT J. ORR, Montana Solid Waste Contractors, Libby opposes HB 434.

SHARON ADAMS and DALE ADAMS, Plentywood Sanitation, Plentywood, oppose HB 434, saying if any of them drop out of the Association, their MRC is in jeopardy.

QUESTIONS:

In answer to a question as to whether certificates have been issued to persons not actually hauling garbage, Wayne Budt said their might be - they don't have the people to go out and check.

Ugrin recommended repeating what was done by the PSC except getting more specific and accurate information, and taking into account facts when records have been destroyed. A few garbage haulers should not be considered as garbage haulers.

Budt further explained in answer to questions that they had used discretion in connection with Ugrin's problems, and this was not enough, but they have no enforcement authority. Most certificates are for county or some place that can be checked. There is a question of establishing territories. They had proved a need for the certificate. With reimplementation they would have a problem with records and proof. He thinks the present law will take care of it. The 1977 law will not be affected by this law. If they are valid now and are active, they are valid. Every Class D was issued a certificate to those who had been hauling garbage. Every one on March 31 who come in will have to show they have been using their certificate or they are going to lose it.

Ugrin is to give the committee a copy of his proposals.

Rep. Dozier closed saying that in 1977 this Legislature passed a law which was heavily lobbied to get it out. The PSC was told they were not to harass these people and so they were stuck in a unique position - they had to implement the legislation and had to do it in a nice way. So we have a problem and hoped the committee will do what they can about it.

Meeting adjourned at 11:15 a.m.

REP. W. J. FABREGA, Chairman

Jo Lahti, Secretary

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL HB 448 Date 2-10-81

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Larry Fasbender	Box 357 Helena	Montana Assoc of Life Underwriters		
Gail Richards	Bozeman	Life of Montana	X	
J. W. Melville	Bozeman	" " "	X	
[illegible]	[illegible]	[illegible]		
[illegible]	Helena	Ins Dept		
[illegible]	Helena	Taxes Dept		
[illegible]	"	"		
Roger M. Ellen	Helena	IND. INS. AGENTS MT		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

H.B. 448 INTRODUCED BY NORDTVEDT, VINCENT AND WALLIN

Life of Montana Insurance Company is one of three domestic life insurance companies domiciled here in Montana. We are asking for some modifications or amendments to the present insurance code which was written during the mid-50's and passed by the 1959 legislature. Certainly, times and economic conditions have changed from the 50's to the 80's. Businesses do not operate today in the same manner and with the same governing restrictions that they operated under in the 50's. We are asking for some updating within a few areas in the insurance code. We are not asking for anything that many of the larger so-called life insurance states do not have the right or flexibility to do. I think that it is very evident that the life insurance climate in Montana has been a big restraint to companies that are domiciled in this state. Montana has had ten life insurance companies since the 50's. We are down to three. Life of Montana is the only truly active company in the state. Great Western Life is wholly-owned by Life of Montana and Montana National Life of Billings is no longer actively soliciting business. This company is owned by a South Dakota company which has offered it for sale and apparently wants out of the state.

This ought to tell us something.

The domestic life insurance industry is a clean industry which certainly helps our economy. We do not drain off funds and send the money out of state. The vast majority of our new investments are right here in the state. We employ people, have over sixty home office employees plus the agency force, we bring into the state premiums from most of the other sixteen states we are licensed to do business in, but we need to be competitive with other companies that are licensed elsewhere.

Because Montana has been so conservative we are asking for very little but it is absolutely imperative that this Bill is passed as Montana has a deposit requirement that I believe only two other states in the entire country have and neither one of the other two is as restrictive as Montana. It is because of this requirement for deposits that we are requesting this Bill and the necessity of immediate action. We have included in the Bill some other items that will help us to be a little more competitive with companies that operate out of the larger life insurance states such as Wisconsin. This Bill does not give us nearly the flexibility that companies domiciled in these other states have but because of the ultra-conservative attitude that Montana has had we are hesitant to ask for an equal opportunity that other companies have that operate in the other older life insurance states such as Wisconsin.

After lengthy negotiations with the insurance department we are asking that you delete from the proposed Bill three specific sections:

33-2-501(11)
33-2-502(4)
33-2-532(d)

and delete from 33-2-832(6) the change pertaining to acquisition of real estate for development of oil or mineral resources

and further amend 332-2-832(6) from 5% to 10% where it said 15%

and amend 33-2-832(8) from 10% to 15% in lieu of 10% to 25%.

EXPLANATION OF H.B. 448
As Proposed to Be Amended

Location of Change	Explanation of Change
Section 33-2-501 (11)	We are withdrawing our proposed amendments to this Section on pages 1, 2, 3, 4 and the top part of page 5 of the Bill.
Section 33-2-502 (4)	Page 5 and the top part of page 6. This is to clarify what goodwill, trade names and other like and tangible assets are in the insurance code. Good will is the amount of value you pay for a going business over and above its actual book value or equipment value. The Montana Insurance Code prohibits goodwill while the National Association of Insurance Commissioners allows good will in this type of valuation. It helps us to be in compliance with the criteria outlined by the National Association of Insurance Commissioners.
Section 33-2-531 (4)	Montana is one of only three states (to the best of our knowledge) out of the entire United States that has these deposit requirements and even the other two states do not have the restriction requirements on deposits that Montana has. There are approximately 1,800 life insurance companies in the United States and three of them, the three Montana companies, have this antiquated requirement to contend with. The insurance code goes to great length to tell you how to value your securities and then because of the deposit requirement all that is thrown asunder and we are told to value them not as the code tells us to value them but to value them at market. We need to change the valuation for deposits to make it the same as the valuation the code prescribes for all other purposes. We cannot comply with the law with this restriction.
Section 33-2-611	These two sections both go with the above Section 33-2-531(4). These are other references in the code to the requirement. The second part of this section is amended to allow the commissioner discretion as to the actions he may take in the event of a deficiency. Most all other states provide the commissioner with this authority and responsibility.
Sections 33-2-523 and 33-2-206	Will allow Montana companies to issue policies with a higher rate of interest to the policyowner and thus a lower premium and allow us to be competitive with a majority of other states.
Section 33-2-532	More correctly defines the section and brings it more into compliance with other sections of the code.
Section 33-2-532 (d)	We are withdrawing our proposed amendments to this Section.

Location of Change	Explanation of Change
Section 33-2-821 (2)	Pertains to subsidiary life insurance companies. In this section there is a prohibition against having over ten percent of your assets in life insurance stocks together with all other subsidiaries you may own. You can only own stocks in life insurance subsidiaries with the Commissioner's consent. We feel this limitation is not practical as the commissioner is the best judge as to the need and amount you may want to hold of other life insurance company stocks. Under some situations you may be deprived of an opportunity to acquire a company and then merge it in.
Section 33-2-822	To help 33-2-822 to better comply with 33-2-821 and to help clarify the section better we have asked for these amendments.
Section 33-2-830 (5)	This allows us to participate in mortgage loans with other institutions such as banks, savings and loans and other insurance companies.
Section 33-2-830 (6)	Because of the change and new methods and innovations in financing we feel the need for what is referred to as wrap-around mortgages. Because of the extremely high interest rates today many owners who have mortgage rates of 6% or 8% do not want to give up that low interest mortgage to put on another higher mortgage on the total new package. We feel it unfair to the consumer to have to do this. Many of the banks and other institutions especially in the East and on the West Coast are doing wrap-around mortgages.
Section 33-2-832 (6)	Pertaining to mining or the development of oil and mineral reserves we are withdrawing. We are asking to change 33-2-832(6) to increase the amount of our real estate investment proposal from 5% to 10% instead of 15% as we have in the Bill.
Section 33-2-832 (8)	We are asking to increase our overall amount of real estate owned from 10% to 15% not the 25% as we had in the proposed Bill.
Section 33-2-431 (1)	This allows an insurer to borrow money on a surplus note or debenture not with the restriction of being able to only pay 6% interest on funds we borrow as today it is a little difficult to borrow money at 6% but would allow us to borrow at the going rate and the section referred to in the code, Section 31-1-107, is the Montana interest limitation section.
Section 33-3-201 (3)(d)	To allow domestic insurers to issue preferred stock, in order to assist in financing expansion; and to eliminate all differences between insurer's shares and the shares of other Montana corporations except for the requirement of a minimum $1 par value.

upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

History: En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.

Part 6
Shares

35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the constitution of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors.

History: En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214.

35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from

Life of Mt. Proposed

Richards Bz

ADDITIONAL AMENDMENTS TO H.B. 448

33-3-201. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) the name of the corporation. If a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock~~,~~ and the number of shares ~~of common stock~~ into which divided~~,~~. These shares shall be issued as provided in 35-1-601, except that the par value of any class shall not be less than $1; ~~the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.~~

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be stated in the articles of incorporation but shall not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

PROPOSED AMENDMENTS FOR HB 448 - Life of Montana proposals.

1. Page 1, line 13 through line 5 on page 5.
Strike: section 1 in its entirety
Renumber: subsequent sections

2. Page 5, lines 24 and 25.
Following: "supplies" on line 24
Strike: "(other" through "33-2-501(1))" on line 25

3. Page 12, line 17 through line 11 on page 13.
Strike: subsection (d) in its entirety

4. Page 19, line 24.
Following: "~~5%~~"
Strike: "15%"
Insert: "10%"

5. Page 20, line 14.
Following: "~~10%~~"
Strike: "25%"
Insert: "15%"

6. Page 20, following line 14.
Insert: "Section 10. Section 33-3-201, MCA is amended to read:"
Statute reads as in present MCA entry except for subsection (d), which is changed as follows: "(d) if a stock corporation, its authorized capital stock~~,~~ and the number of shares ~~of common stock~~ into which divided~~,~~. These shares shall be issued as provided in 35-1-601, except that the par value of any class shall not be less than $1; ~~the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.~~"

Renumber: subsequent section

1977 [illegible]

434 D
185
187

HB 448 Tinnane

H.B 434 Good Morn, my name is [illegible]. I am the proprietor and operator of M.V. [illegible], Whitefish, Mont. and strongly opposed to this [illegible].

There is a road running North from Whitefish which ends at the Big Mt. Resort. During the two years prior to the issuing of class D certificates my company (former owner) picked up the refuse at the resort, at a separately operated facility at the resort and at homes near the resort and along the road. At the time that the PSC sent out its questionnaire to all class C haulers one of the directors of the Big Mtn who has a class C license, claimed to have serviced the Big Mt during the two years. The following year and successive years ~~[illegible]~~ the Big Mt. has contracted with a local rancher for use of a dump truck to haul their refuse and the Director of the Big Mtn, in whose name the class D certificate was issued, has continued to report this activity on his annual reports. This man is not involved in hauling refuse. His sole interest is in owning a potentially valuable certificate [illegible]

the Big Mtn a written proposal this year giving them a more comprehensive service than they presently have at a rate that at its highest would be equivalent to what they paid last year ~~providing is their charges would~~ based on their volume of refuse.

When I did not hear from them I spoke with their business mgr. He told me he knew nothing about the solicitations being requested and that the fee paid the local packer for hauling refuse was included in his contract for snow clearance.

The result of this has been bad for my business and also bad for my customers. We still haul refuse from the Big Mtn but because there are now two haulers of duplication of effort we can not operate at full capacity or maximum efficiency.

This appears to be the crux of the issue - The result of the PSC issuing more certificates than justified has been to artificially raise the supply curve by legitimizing more haulers than are necessary and sufficient. The economies of scale in our industry are such that any trucks running at less than full capacity must

result in higher costs for haulers to remain operative. This increased cost must then be passed on to the consumer.

As you are all aware, of any analysis of supply + demand — an artificially raised supply curve does not *merely* raise the price to the consumer. It also results in our operating at a point further back on the demand curve i.e. Our artificially boosted cost means less demand which means the entire community suffers a reduction in safety + health which depend upon an efficient, inexpensive *full* service to the community.

In addition, the improperly validated certificate which I am speaking about is not limited to the Tri, Mr. Rather, it is a certificate based on this haulers class C certificate authorizing him to haul within a 50 mile radius of Somers Mt. The validation of this certificate being held for [illegible] opens the possibility of a large conglomerate coming in and competing with Art [illegible] C Falls, Chuck Thul from Kalispell, Merkel from Lakeside and could extend into Wes' territory in Polson.

The validation of these illegally issued

dialogue purposes

[illegible]

that certificates will defeat the purposes of regulation, is increased efficiency and will result in a <u>windfall</u> gain of a valuable asset at the expense of those of us who have been out on the road hustling rebase and trying to provide the best possible service, at the lowest price to the most customers.

Please, do not pass this legislation, it is not a good piece of legislation. Rather I would request that the legislature instruct the P.S.C. to go back and reevaluate the certificates issued based on the same base year.

Finally I would like say that I believe the staff of the P.S.C. knows, as well as our association, who possesses these illegally issued certificates and stand to gain from this law.

Finally — I note that none of these certificateholders are here to defend themselves.

Why did agency [illegible]?)

Tindall [illegible] for garbage

NAME Douglas Leonard Reg. Physician BILL No. HB 900

ADDRESS Helena DATE 2-10-81

WHOM DO YOU REPRESENT Montana Soc. Allergy

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

VISITORS' REGISTER

HOUSE _____ COMMITTEE

LL _____ Date _____

NSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	O
[illegible]	[illegible]	State Govt Rep		
[illegible]	Great Falls	Self	—	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME TERRY ARCHAMBEAULT BILL No. 434-487

ADDRESS GLASGOW, MT. DATE 2-10-81

WHOM DO YOU REPRESENT T & K TRUCKING, INC.

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Dale W. [illegible] BILL No. 487

ADDRESS 234 S. Dano Plentywood DATE 2/10/81

WHOM DO YOU REPRESENT Plentywood Sanitation Co.

SUPPORT ______ OPPOSE X AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME: William L. Ramirez DATE: 2-9-81

ADDRESS: P.O. Box 1691 Helena Mt.

PHONE: 442-2220

REPRESENTING WHOM? Mont. Solid Waste Contractors Assn.

APPEARING ON WHICH PROPOSAL: H.B. 487

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

COMMENTS: the association we support this Bill, as long as it is clear that class D carriers will be treated in the same way as class C carriers are treated. It is clear that the P.S.C. should be able to Regulate a carrier who is gouging the public. In fact, the Association is not really worried about being accused of overcharging, because, as a matter of course, the private carriers generally charge less than cities do a

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit D Zadick

AN ACT PROVIDING FOR THE REIMPLEMENTATION OF THE PROVISIONS OF SECTION 8-102.2 RCM (1947) (NOT RECODIFIED) AND PROVIDING FOR THE CREATION OF A SEPARATE CLASS D MOTOR CARRIER.

1. All motor carriers who actually engaged in the transporation of ashes, trash, waste, refuse, rubbish, garbage and organic and inorganic matter on a regular basis for a period of one year prior to July 1, 1977, upon compliance with the provisions of this Act, shall receive a Class D certificate of public convenience and necessity.

2. Applicants under this Act shall submit, in an informal manner, business records reflecting operations described above within 90 days of July 1, 1981. The Commission shall act upon each application within an additional _____ days thereafter. If there is sufficient proof consistent with the requirements of this Act, the Commission shall issue a Class D certificate authorizing transportation as a Class D motor carrier within the geographical area established by the applicant. Thereafter, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state of Montana.

3. The term "business records" includes, but is not limited to:

a) Photocopies of customer lists or route sheets;

b) Photocopies of vehicle titles:

c) Photocopies of ledger accounts;

d) Photocopies of annual reports;

e) Photocopies of letterhead, advertisements and directory listings;

f) Photocopies of contracts with businesses or residential customers for transportation and disposal of solid waste;

g) Employee records.

4. Each Applicant shall also submit at the same time a map depicting the geographical area actually served during the relevant time period. The maps shall indicate in as much detail as practical the locations of customers served by the applicant.

5(a) Each applicant shall also submit an affidavit signed under oath and subject to the provisions and penalties of Section 45-7-202 MCA (1979) stating:

> The applicant affirms under oath that he was actually engaged in the transportation of Class D materials on a regular basis for one year prior to July 1, 1977, and the applications and supporting documents are true and correct and reflect compliance with the requirements of this Act.

(b) In the event that an applicant is unable after a diligent search to obtain business records which would indicate the nature of the applicant's business and the area served by the applicant during the relevant time period, the applicant shall submit an affidavit signed under oath and subject to the provisions and penalties of Section 45-7-202 MCA (1979) stating:

> 1) The applicant has made a diligent search and is unable to obtain business records which would meet the requirements of this Act; and
>
> 2) That he was actually engaged in the transportation of Class D materials on a regular basis for one year prior to July 1, 1977; and

3) That the attached list of customers and map of the geographical area were actually served by the applicant.

6. Any Class D certificate obtained under the provisions of this Act by an applicant who has knowingly misstated the nature, geographical extent or any material fact, of his business shall be cancelled by the Commission.

7. Accomodative transportation service or services performed which are incidental to other operations of a motor carrier shall not be used as a basis for an application under this Act.

Exhibit A

HB 487

This bill would allow the PSC to investigate, determine and fix reasonable rates for the operations of Class D carriers if it is required for the best interest of the public.

The carriers were subject to this law prior to 1977 (when they were Class C) and the Class D provision was not carried forward in this particular statute. Therefore, at present the Commission has no jurisdiction over rates charged by garbage haulers.

The bill does not require rate regulation; it simply gives the Commission the ability to impose rates if it receives evidence that the publi is being unfairly charged by a garbage hauler. If carrier rates were fixed by the PSC the carrier could not charge more or less than the fixed rates without Commission approval.

NAME _____ BILL No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL HB487 Date 2-10-81

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPP.
William L. Romine	Helena	Solid Waste Contractors	AA	
Scott J. Orr	Libby	Mont Solid Waste Cont		X
Larry N. King	Col Falls	Wee Haul		
Ben Cohen	Whitefish	North Valley Refuse		X
Terry Archambault	GLASGOW	T&R Trucking, Inc		X
Sandra Kelly	Kalispell	Evergreen Disposal		
[illegible] PAPAGI	GREAT FALLS	TRI-COUNTY DISPOSAL		
Floyd Palagi	Great Falls	Greens Disposal		
[illegible]	Helena	Dept. Health & Env. Sciences		
[illegible]	[illegible]	Bitter Root Disposal		
John Palagi	Great Falls	Greens Disposal		
[illegible]	Great Falls	MK-Solid Waste		
Gary M. Zadick	Great Falls	MT. Solid Waste		X
Bill Opitz	Helena	PSC	X	
Josephine Driscoll	"	Self		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

to operate under a class B motor carrier certificate and to submit an annual statement to the commission shall not apply to solid waste contractors, to household goods carriers as defined by the department of public service regulation, nor to any carrier whose authority is confined by certificate to transportation within a distance of fifty (50) miles or less from a particular location and that is performing pick up and delivery service under contract for one or more common carriers within that area.

Class D motor carriers embraces all motor carriers operating motor vehicles transporting, including pickup and disposal of, ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter. Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the above-described commodities. Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of the Montana Motor Carrier Act and the rules of the commission.

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act."

Section 2. There is a new R.C.M. section numbered 8-102.1 that reads as follows:

8-102.1. Implementation. All Class D motor carriers, whether property carriers or otherwise, who have conducted a motor carrier transportation service for hire utilizing motor vehicle equipment and appropriate disposal sites consistent with the laws of this state and rules of the commission and the department of health and environmental sciences shall, upon written proof consisting of prior business records reflecting a transportation service for 1 year prior to the effective date of this act, which business records shall be submitted to the commission in an informal manner, receive a certificate of public convenience and necessity as a Class D carrier authorizing transportation of the above-described commodities within the geographical area described in the written proof submitted. Such proof must be submitted to the commission within 4 months following the effective date of this act; and the commission shall issue such Class D certificates within an additional 90 days, and thereafter, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state of Montana.

Approved March 25, 1977.

CHAPTER NO. 139

AN ACT ESTABLISHING MOTOR VEHICLES TRANSPORTING GARBAGE AND SOLID WASTE AS BEING WITHIN THE TERM "MOTOR CARRIER" AS DEFINED IN THE MONTANA MOTOR CARRIER ACT; AMENDING SECTION 8-101, R.C.M. 1947.

I. NAME:

Exhibit B Algeo 134

ADDRESS:

RECEIVED
OCT 20 1977
P.S.C.

TELEPHONE NO:

AUTHORITY NO:

IV. Are you presently operating under the certificate issued to you by the Montana Public Service Commission (this means each and every certificate)?

☒ YES ☐ NO

III. If you do NOT intend to actively participate in garbage hauling we will restrict your current Class C and/or B authority against transporting garbage.

☐ I do NOT want to transport garbage. Do not issue me Class D authority. You may restrict my current certificate(s) against transportation of garbage.

☒ I DO want to transport garbage. Listed below are business records proving that I have hauled or attempted to haul garbage.

Lund Bar
Sylvia Bar
Presbyterian Church
Galt's Hardware
Galt's Garage

We haul for anyone who wants us to but most people here haul their own now. In past years we hauled for all the businesses & a lot of the local people.

IN ANY EVENT (REGARDLESS OF WHAT YOU CHECK ABOVE), SUBMIT THE APPROPRIATE CERTIFICATE(S) OR AN AFFIDAVIT STATING THAT IT HAS BEEN LOST, BY NOVEMBER 1, 1977.

Certificate Holder

Exhibit C

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA,

IN AND FOR THE COUNTY OF LEWIS AND CLARK.

In the Matter of the Application of O.J. Galt, Stanford, Montana for Authority to Sell Certificate of Public Convenience No. 1390, Sub A, to MARVIN E. MINTYALA, d/b/a CITY GARBAGE AND MR. "M" DISPOSAL, Lewistown, Montana.

No. 44617

MEMORANDUM and ORDER

Respondents have moved for further hearing on the merits and for an opportunity for further briefing thereon. The basis for the motion is the indication of the Court at the close of the April 14, 1980 hearing that if the respondents' motion to dismiss were to be denied then further hearings on the merits would be permitted. The Court was, of course, grieviously in error in hearing and considering a motion to dismiss a petition for judicial review. Petitions for judicial review should be considered on the administrative agency record alone, unless it is alleged that there were irregularities in procedure before the agency not shown in the record, in which case proof thereof may be taken. (MCA 2-4-704) If a party wishes to submit additional evidence, it may do so upon remand to the agency with the approval of the Court (MCA 2-4-703). There was no motion to do so here, nor was there any suggestion as to irregularity in the procedure before the agency, on or off the record. The matter in this case was fully submitted on the record, which was carefully reviewed by the Court after extravagent pleading, hearing, briefing and argument. Upon such submission, the Court may reverse or modify the decision of the agency if the substantial rights of the appellant have been prejudiced because the administrative decision is, inter alia, affected by error of law or in excess of the statutory authority of the agency (MCA 2-4-704). Here the record clearly shows, and we have found, that the agency was dealing with a permit that was void, ab initio, and that it was without authority to do so.

The purely self-serving and unexamined additional testimony of Mr. Budt (who testified and was cross-examined on April 14, 1980), submitted in support of the Public Service Commission's motion, has been, over the objection of petitioner, carefully considered by the Court. This testimony by the Public Service Commission'

employee apparently in charge of the Class "C" program pleads expediency not impossibility, in the agency's patent failure to render even superficial compliance with the law. Taking everything stated therein as accurate and truthful, it cannot and does not change the conclusion reached in the Memorandum and Order of July 31, 1980.

Thus while the Court was in error in entertaining a motion to dismiss upon judicial review, the function of the review has been fulfilled. The record has been fully considered and all necessary arguments have been heard, briefed and considered. A conclusion, authorized by statute, has been reached. Nothing of any substance within the purview of the administrative procedure act remains to be done.

The motions of respondents for further proceedings in this Court are DENIED.

Dated this 14th day of October, 1980.

GORDON R. BENNETT
District Judge

cc to:

Ms. Eileen E. Shore
Montana Public Service Commission
1227 11th Avenue
Helena, Mt.,

William E. O'Leary, Esq.,
Arcade Building, Suite 4-G
Helena, Mt.,

Neil E. Ugrin, Esq.,
Alexander and Baucus
P. O. Box 1744
Great Falls, Mt.,

"Judicial Review"

Exhibit C

Green 434

Exhibit C

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA,

IN AND FOR THE COUNTY OF LEWIS & CLARK.

In the Matter of the Application of O.J.GALT, Stanford, Montana, for Authority to Sell Certificate of Public Convenience No. 1390, Sub. A, to MARVIN E. MINTYALA, d/b/a CITY GARBAGE and MR. "M" DISPOSAL, Lewistown, Montana, Docket No. T-3680, Order No. 2657.

No. 44617

MEMORANDUM and ORDER

On May 15, 1936, The PSC granted O. J. Galt its Class "C" Certificate No. 1390 authorizing motor transport of "property" in the town of Stanford and within a 70-mile radius thereof.

On July 1, 1977, Chapter 138 of the 1977 laws of Montana became effective. The first section of the act amended Section 8-102 R.C.M. (MCA 69-12-301 and 69-14-314) creating and defining a new motor carrier classification, Class "D", for garbage hauling. The second section of the act created a new R.C.M. Section 8.102.1 (never codified in MCA). This was an implementation section and provided:

> "All Class D motor carriers, whether property carriers or otherwise, who have conducted a motor carrier transportation service for hire utilizing motor vehicle equipment and appropriate disposal sites consistent with the laws of this state and rules of the commission and the department of health and environmental sciences shall,upon written proof consisting of prior business records reflecting a transportation service for 1 year prior to the effective date of this act, which business records shall be submitted to the commission in an informal manner, receive a certificate of public convenience and necessity as a Class D carrier authorizing transportation of the above-described commodities within the geographical area described in the written proof submitted. Such proof must be submitted to the commission within 4 months following the effective date of this act; and the commission shall issue such Class D certificates within an additional 90 days, and thereafter, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state of Montana."

It will be noted that after the passage of seven months Class "C" carriers could not haul garbage unless they had obtained a Class "D" in the manner prescribed.

On November 18, 1977, Galt was issued a Class "D" Certificate No 1390(A) under the new statute, and on May 3, 1978, Galt applied for authority to transfer the certificate to Marvin Mintyala. The application was duly noticed by the PSC and June 7, 1978, was set as a deadline for protest. On June 5, 1978, F. L. Green,

who held a Class "C" permit to haul garbage within Great Falls and a ten mile radius thereof, joined by Johnny G. and Margaret F. Palagi, who proposed to buy Green's permit, protested the transfer of Galt's certificate on the ground Galt's certificate was invalid insofar as it applied to Great Falls and a ten mile radius thereof. The Commission set a September 7, 1978, hearing on the application, and on September 5th Green and the Palagis filed a motion to quash the hearing and any further proceedings on the application, and a motion to invalidate Galt's Class "D" certificate. Both motions were made on the ground that Galt had not complied with Section 8-102.1, supra, with regard to the filing of prior business records to support his application for the certificate.

The hearing was held and on December 29, 1978, the PSC issued its order declaring Galt's certificate null and void as improperly issued. Mintyala moved for reconsideration, reconsideration was granted and thereafter the PSC affirmed its original order. But after reconsidering a second time, the PSC on November 27, 1979, issued its order (Docket T-3680, Order 2657a) granting authority to transfer Galt's certificate to Mintyala.

The commission reached, inter alia, three pertinent conclusions of law:

1. The protestants' attack on the legality of the certificate was not timely.

2. The only issue that could be raised upon an application for transfer of a certificate was that of the fitness of the transferee.

3. MCA 69-12-323(3) prohibits the termination of a motor carrier certificate without cause.

December 10, 1979, the Palagis (to whom Green had transferred his Class "D" certificate with the commission's blessing on February 2, 1979) filed their petition for judicial review of the commission's final order and a motion to temporarily stay the transfer of the Galt certificate. The motion was granted and the stay remains in effect. Two hearings have been held (1/18/80 and 4/14/80) and the matter exhaustively pleaded, briefed and argued. Final briefs were submitted May 5, 1980 and the matter is ready for determination on the merits.

Petitioners ask that the PSC decision authorizing the transfer of Certificate No. 1390(A) be reversed. They also ask for a declaration that in

issuing the certificate originally the PSC did not follow the requirements of Section 8-102.1, supra, and that the certificate is therefore null and void.

A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act (2-4-702). Petitioners fought the transfer sought here from the time they received notice until the final decision of the PSC, a period of seventeen months. The PSC in its amended final order holds (Conclusion of Law No. 5) that it is powerless to terminate the certificate "without cause." The order is unquestionably a final one and the administrative remedies available to the petitioners are clearly exhausted. Nor can there be any question that petitioners are aggrieved by the order. Under the order, they are faced with new competition in an area for which they have purchased operating authority at a cost of $275,000. The new competition has never been required to show, and has never shown in any form, public convenience and necessity for their authorization to haul garbage in competition with petitioners in their authorized area. They are unquestionably aggrieved, not in prospect but in actuality, by the PSC's decision. And this is a "contested case" under the definition provided in Section 2-4-102(4). It is a licensing proceeding that will, as noted, affect the legal rights of the petitioners. Thus, this Court has authority to review the decision and to take such action as is provided for in Section 2-4-704. That section expressly authorizes reversal of the agency decision, as requested here, upon a proper showing. The next question is whether we can, in this proceeding, issue the declaratory judgment sought. The rights, status and legal relations of the petitioners are affected by the transfer, as well as the existence, of the certificate in question and this certificate certainly represents a state franchise. Thus under the declaratory judgments statute (27-8-202) they may have determined the question of the validity of that franchise and to obtain a declaration of their rights in relation to it. They would be entitled to such a declaration even if they had not filed their protest against the transfer with the PSC. Their right to the declaratory judgment exists separate and apart from the administrative procedure act and the statutory procedures and regulations applicable to the PSC. And that action brought here under the A.P.A. is not open to objection because it contains a request for declaratory judgment

(27-8-201).

Much attention has been lavished on the question of whether the PSC has jurisdiction to do anything about the initial issuance of the certificate, about whether the petitioner gains standing to enter the transfer proceeding on a jurisdictional theory (challenging the jurisdiction of the PSC to transfer a void certificate), about whether Section 8-102.1 R.C.M. has expired therefore making it impossible for anyone to do anything about a possible illegal issuance of a certificate under it, and about whether petitioners' predecessor in interest should have challenged the certificate before the implementing statute expired. None of these questions need be answered, tempting as the opportunity to do so may be. We hold, above, that the petitioners are entitled to a declaratory judgment as to the validity of the certificate and we need go no further. If the certificate is valid then it may be transferred. No substantial question is raised here as to the propriety of the transfer procedure or as to the factual basis upon which the PSC decided to transfer. If the certificate is not valid it doesn't make any difference what the PSC does with it. And if the PSC issued an invalid certificate under an expired implementation statute the expiration of the statute (if it did expire in this case) does not somehow place the invalid certificate beyond the reach of adjudication, even though it might place it beyond the reach of the PSC.

We entertain no doubt whatever that the courts of this state have jurisdiction and power at all times to identify and set aside as null and void ultra vires acts of state administrative agencies. The powers of agencies are limited to those granted, expressly or by clear implication, by the legislature. It is the business of the courts to maintain that limitation by appropriate measures. See, for example, Kadillak v. Anaconda Co., 36 St. R. 1820.

The only question we have to deal with, then, is the validity of the certificate. If the implementation statute (8-102.1, supra) was not complied with by either the applicant (Galt) or the PSC, or both, the certificate is invalid. In my opinion, the statute was not complied with.

We start with the statutory disputable presumptions that official duty has been regularly performed and that the law has been obeyed (93-1301-7), and with the rebuttable common law presumption that the proceedings involved were regular.

(Lish v. Martin, 55 M 582, and In re McGovern's Estate, 77 M 182). This is about the only evidence there is that the proceedings underlying the issuance of the certificate were regular and in accordance with the law. The rebutting evidence is that the PSC sent forth an entirely inadequate request for information and received back an entirely inadequate response. The commission thus deprived itself of any legal basis upon which to issue the certificate.

We are dealing here with a reasonably clear statute. Except for the question of whether the implementing section expired seven months after its effective date, less a question of legislative intent than of technical application, there is little, if any, question of legislative intent. In the first section of the act, the legislature did four things. First, it created a fourth class of motor carrier--for garbage. Second, it defined garbage. Third, it required garbage carriers to operate under a certificate of public convenience and necessity. And, finally, it provided than when application was made for "new or additional authority" the applicant had to comply with all the other requirements of the motor carrier act and the rules of the commission. It is clear, then, that the legislature intended that the new class was to be regulated essentially the same as the other three classes. There was a single exception and that was made in the second section, the so-called "implementation" section, which provided instructions on how "grandfather" certification was to be handled. "Grandfather" certificates were made available to everyone, apparently, who had been hauling garbage without breaking the law upon submission, "in an informal manner" of written proof consisting of prior business records reflecting a transportation service for 1 year prior to the effective date of the act. Certificates were to authorize garbage transportation "within the geographical area described in the written proof submitted." It is clear the grandfather carriers in applying for a Class "D" certificate were not to be required to meet the requirements of the Motor Carrier Act and the rules of the commission that all other new applicants were required to meet, that is to say, they were not required to file a formal application, provide appropriate notice and prove public convenience and necessity. All they had to do was to demonstrate, through their business records, that they had been hauling garbage in the area for which they sought the Class "D" permit.

In carrying out this legislative direction, the agency must be allowed considerable latitude and discretion. If there is substantial compliance, the form is not objectionable, and in this case there is express legislative sanction for informal submission. There can be no doubt that the commission provided the vehicle for informal submission. The only thing the applicant was required to submit, and that was in fact submitted in this case, was the form attached to the petition as Exhibit "A." Stretch as one might, this cannot be called a business record, or even reference to a business record. It is proof of nothing. It says absolutely nothing about transportation service being provided for one year prior to the effective date of the act, or any other time except "past years." On its face it tells absolutely nothing about the area served, although we learn from respondent's admission that the area served was limited to the Stanford community. One cannot perceive from the application that the area served was even in the State of Montana. Informal submission is one thing, near total lack of information is quite another. The submission upon which the certificate was issued in this case suffers from the latter infirmity. There has not been even perfunctory compliance with the statute. Had the legislature limited its requirement to, say, an informal application, this form, as filled out, might qualify as at least perfunctory compliance. But the legislature went to the trouble of laying out, fairly precisely, the kind of information that should be informally submitted. It cannot be doubted that the submission of this kind of information was, in the collective mind of the legislature, an unavoidable condition precedent to issuance of the "grandfather" Class "D" certificate. The commission did not receive that information and therefore never acquired authority under the statute to issue the certificate, which is, therefore, null and void for all purposes and was so ab initio. As the certificate never existed, the great debate carried on here in the briefs on whether it could be challenged because of the expiration of the implementing section is irrelevant.

Inasmuch as the final decision of the PSC had to do with the transfer of a certificate which we find to be null and void, it would seem unnecessary to adopt any of the remedial procedures provided for in the Administrative Procedure Act and prayed for in the petition for judicial review filed here under that act. We will therefore refrain from doing so.

Judgment may be entered declaring Class "D" Certificate No. 1390(A) issued by the Montana Public Service Commission on November 18, 1977, to be null and void for all purposes.

Dated this 31st day of July, 1980.

GORDON R. BENNETT
District Judge

cc to:

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Public Service Commission
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1227 11th Avenue
Helena, Mt., 59601

Exhibit A

HB-434

First, let me state that in implementing the 1977 law or the proposed law, no carrier was, or will be, given any authority that he did not possess prior to July 1, 1977.

The 1977 statute was interpreted by the Commission and implemented within the time period specified within the statute. Approximately 330 certificates were affected by the 1977 implementation statute and the Montana Commission reissued 120 Class D permits.

The issuance of one particular permit (Stanford and 70 miles) was challenged in Court by the Solid Waste Contractors on the basis that the Commission did not follow the statute in question.

The court case in this matter was started in early 1979 with a decision by the District Court in the Fall of 1980. The court held that the Commission did not correctly issue the Class D Certificate and held the Certificate to be invalid. This case is presently being appealed to the Montana Supreme Court.

The Legislative Council labeled the 1977 law a temporary statute and the recodification bill which was passed in 1979 Legislature did not include this statute.

The situation in which the Commission now finds itself is that:

1. All carriers were asked to submit identical data and the Class D Certificates were issued based upon that data.

2. The District Court has found that the data submitted in the court case (Stanford and 70 miles) to be insufficient, so a cloud of doubt exists for all certificates. However, the Court has stated that certificates should be reviewed on a case by case basis which could mean 120 individual lawsuits.

3. The statute has expired and the Commission has no authority to require more information or redo anything that has been done in this matter.

4. If more information could be obtained the records are likely not available for the time period called for in the original statute (1year prior to July 1, 1977). In addition, a number of certificates have been sold or leased and are not now operated by the same person as in 1977. For this reason, the reimplementation would be impossible to accomplish.

5. All carriers holding Class D authority are subject to future litigation of their authorities through no fault of their own.

The Commission is now asking the Legislature to declare all present Class D Certificates valid to clear up the present cloud that the carrier has to deal with. In addition, a statute passed in the 1979 Legislature makes the carrier use this authority, or the Commission may cancel it. This law will eliminate many certificates that are not being used to serve the public.

Again, let me state that no carrier was, or will be given any additional authority that he did not possess before the enactment of the 1977 legislation

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

BILL HB 434 Date 2-10-81

SPONSOR ______________________

NAME	RESIDENCE	REPRESENTING	SUPPORT	O
William L. Romine	Helena	Solid Waste Contractors		X
Scott J. Orr	Libby	Mont Solid Waste Cont.		X
[illegible]	[illegible]	[illegible]		
Ben Cohen	Whitefish	North Valley Refuse		
Charles Kelly	Kalispell	Evergreen Disposal		
David L. Palagi	Great Falls	Tri County Disposal		X
[illegible] C Fay	Ronan	City Sanitary Service		X
[illegible] Wilson	Hamilton	Bitter Root Disposal		
John Palagi	Gt. Falls	Greens Disposal		X
[illegible]	Great Falls	Mt. Sol. W. [illegible]		X
Don M. [illegible]	Great Falls	Mt Solid Waste		X
Bill Opitz	Helena	PSC	X	
[illegible]	Plentywood	Plentywood Sanitation		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Henry A Hays BILL No. 434 & 487

ADDRESS 3494 Sunnyside Creek Dr DATE 2-10-81

WHOM DO YOU REPRESENT Merit Solid Waste Corp.

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Scott J Orr BILL No. 434 & 487

ADDRESS Box F Libby DATE 2/10/81

WHOM DO YOU REPRESENT ORR'S DISPOSAL - Mont Solid Waste Cont Assoc.

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME _____ BILL No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Ben Cohen BILL No. 434 + 4/0

ADDRESS Box 1007 - Whitefish DATE 2/10/81

WHOM DO YOU REPRESENT North Valley Refuse - Whitefish

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME: William L. Romine DATE: 2-10-81

ADDRESS: P.O. Box 1691 Helena, MT.

PHONE: 442-2220

REPRESENTING WHOM? Mont. Solid Waste Contractors Assn.

APPEARING ON WHICH PROPOSAL: H.B. 434

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

COMMENTS: this Bill is an attempt to void a decision made by the District Court of the First Judicial District here in Helena. That case pointed out that the P.S.C. has utterly failed to comply with Montana Law in issuing Many class D permits in 1977. It was suppose to Require business Records before issuing class D permits. Instead it merely issued permits virtually to everyone. This has forced legitimate carriers to go to court. Now the P.S.C. wants to cover its inadequacies by legitimatizing all class D permits. Instead of placing the burden upon the legitimate carriers, the P.S.C. should be Required to perform its duties.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY