

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By CHAIRMAN TVEIT, on MARCH 16, 1989, at
1:00 p.m. in Room 410 of the State Capitol.

ROLL CALL

Members Present: SENATORS: Larry Tveit, Darryl Meyer,
Hubert Abrams, Bill Farrell, John Harp, Jerry Noble,
Larry Stimatz, Cecil Weeding, Bob Williams

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council

Announcements/Discussion: CHAIRMAN TVEIT announced the
hearings on House Bills: 689, 572, 559 and 245. He
also informed the Committee that by request of
Committee members House Bill 394 would be reconsidered
and there would be executive action on House Bills:
689, 671, 595, 394, 464 and 559.

HEARING ON HOUSE BILL 689

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE DAN HARRINGTON, District 68 stated that
there is a real need for House Bill 689. These train
crews are well aware of the need of portable radio
transceivers. The people work night and day in the
most adverse condition. Portable radio transceivers
being used during some conditions could have saved time
in the delay of the train. He stated that the train
crews as well as, the public would benefit from the use
of these transceivers.

List of Testifying Proponents and What Group they Represent:

Robert Van De Vere, Concerned Citizens Lobbyist
Raymond West, Legislative Director for the
Transportation Union
James Mular, Montana Joint Rail Labor Council
Dave Ditzel, Brotherhood of Locomotive Engineers
Ed Flies, Montana State Council of Professional Fire
Fighters
Lyle Nagel, Montana State Volunteer Fire Fighters
Association

Testimony:

ROBERT VAN DER VERE stated that the transceiver idea is the best there is. When there is a train wreck they would be able to make communications back and forth. Knocking off the cabooses was the biggest mistake ever made.

RAYMOND WEST gave his testimony in support of House Bill 689. SEE EXHIBIT 1.

JAMES MULAR representing the Montana Joint Rail Labor Council stated that they represent approximately 3,500 active and retired employees in the state of Montana. This legislation is long needed. He explained that they have gone through in the past with the railroads about such things like walk ways on bridges, certain safety factors with the putt-putt car, etc. He stated that every time they came to this legislature for that particular legislation, they were always told it was a negotiable item. Communications could help to meet the Montana law for the 10 minute crossings.

DAVE DITZEL, Brotherhood of Locomotive Engineers stated that modern day railroading requires affective communication. There are circumstances that arise where there is an emergency situation. For instance if in an accident the engine has passed beyond the point of impact because of the mechanics of stopping it, if there is not a means of communication it would cause a lot of problems.

ED FLIES, Montana State Council of Professional Fire Fighters stated that they support this bill. If there is a fire or a medical emergency on the other side of the tracks just before that train is at the crossing, the man seeing this would be able to radio ahead so they could do what was necessary.

LYLE NAGEL representing the State Volunteer Fire Fighters Association expressed support of House Bill 689.

List of Testifying Opponents and What Group They Represent:

Charley Chambers, Montana Rail Link
Pat Keim, Burlington Northern
Leo Berry, Burlington Northern

Testimony:

CHARLEY CHAMBERS, Assistant Chief Engineer for Montana Rail Link stated that operating employees are given a portable radio which they have a vested interest. The radios cost approximately \$550 and the employees make a deposit of \$150 through payroll deductions and the radio belongs to the employee. Montana Rail Link maintains that radio and makes repairs. When the employee leaves the company, the deposit of \$150 is refunded if the radio is not damaged beyond repair. Presently they use a midland portable radio, which is fully programmable and is able to scan channels that are used on the railroad. The radio is switchable between 2 and 5 watt. The reason for the deposit is to be sure the employees take pride in their radio. Loss and damage has been reduced through this method. This bill, as written, puts a hamper on that system. He proposed a list of amendments for the bill should it be passed. SEE EXHIBIT 2.

PAT KEIM representing Burlington Northern opposes House Bill 689 because he believes the bill is totally unnecessary. Burlington Northern does provide radios on all locomotives and all train crews. There is from time to time a shortage, but when there is a shake down suddenly there are more radios. The subject is already covered under existing agreements with the labor unions. He did suggest however, some changes in the bill if it should pass. He stated that he agrees with Montana Rail Link as far as the deposit is concerned. It should be applied to all railroads, even the short lines. The power should be left out of the bill as far as wattage is concerned.

LEO BERRY representing Burlington Northern stated there are federal laws regulating safety and transportation issues. Some safety matters can be regulated by the PSC. He explained that the removal of the caboos law was part of the labor contract in 1982 and in 1983 the legislature passed a mandatory caboos bill after it had been done away with by the UTU. He feels that the federal court would probably do away with this legislation the same as they did with the caboos bill. For these reasons, they oppose this bill.

Questions From Committee Members: SENATOR NOBLE asked Representative Harrington why this is not done with some other negotiations.

REPRESENTATIVE HARRINGTON answered that it is a safety factor and are usually brought before the legislature. There is also the convenience factor as far as the trains being tied up across the tracks for a great period of time.

SENATOR NOBLE stated that BN and MRL have testified that they both have radios that they are using now, so what is the problem.

RAYMOND WEST answered that the supply does not meet the demand. The only time that BN furnished radios is when you were working with sharp crews. He stated that they have left Havre time and time again without radios.

CHAIRMAN TVEIT asked Pat Keim about his statement of having one radio per train.

PAT KEIM explained that every locomotive has one radio. They try to provide enough radios so there is one for every train.

SENATOR WILLIAMS asked if the radio in the locomotive is portable or built in.

PAT KEIM answered that it is not a portable, it is somewhat larger unit which is a fixed unit. He said they are required to provide two portable radios if they are short one breakman on a 74 car train. In the past it has cause problems, because they did not have two radios available, they had to call another breakman.

SENATOR NOBLE asked Pat Keim if he agreed with the amendment with regard to the deposit.

PAT KEIM stated that he did agree with the amendment.

SENATOR WILLIAMS asked Joe Brand if he had seen the amendments.

JOE BRAND said he had not seen them. He added that the radios are beneficial to the railroad as well as the public.

SENATOR ABRAMS asked Joe Brand about it benefitting the railroad and public, and asked if it would be beneficial to the employee as well.

JOE BRAND answered saying that the employee is just trying to do the job according to the book of rules, it helps the railroad a lot more than the employee.

SENATOR ABRAMS explained that it was not his intention to be negative, but from his aspect he feels it is beneficial also to the employees.

SENATOR FARRELL asked what the penalty is if they don't have a portable radio on a train.

WAYNE BUDT stated that the fines are set out in the statutes.

TIM BAKER responded to Senator Farrell's question. The standard statutory provision provides that any violation of their sections would carry a misdemeanor of a maximum penalty of \$1,000.

SENATOR FARRELL asked if they have people who can go on the trains to see if they have radios on them.

TIM BAKER said they do not.

SENATOR WILLIAMS asked about other states such as North Dakota and Idaho as far as how many radios they require.

JIM MULLEN answered that he did not know, but that the Union Pacific in Idaho is more liberal about it.

Closing by Sponsor: REPRESENTATIVE HARRINGTON stated that he felt it is a safety factor and is an essential piece of legislation.

DISPOSITION OF HOUSE BILL 689

Discussion: None

Amendments and Votes: SENATOR WEEDING MOVED to amend House Bill 689. SEE EXHIBIT 2.

MOTION FAILED 4-3 with SENATORS: MEYER, NOBLE, TVEIT, WILLIAMS OPPOSING.

Recommendation and Vote: SENATOR NOBLE MOVED that HOUSE BILL 689 BE NOT CONCURRED IN.

MOTION PASSED 4-3 with SENATORS: WEEDING, ABRAMS, HARP OPPOSING.

HEARING ON HOUSE BILL 572

Presentation and Opening Statement by Sponsor:
REPRESENTATIVE GENE DEMARS, District 29 introduced House Bill 572. SEE EXHIBIT 3.

List of Testifying Proponents and What Group they Represent:

Jesse Munro, Acting Director for the Department of Highways

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JESSE MUNRO, Acting Director for the Department of Highways stated they support House Bill 572.

Questions From Committee Members: SENATOR WILLIAMS asked if there is a sunset on this bill.

REPRESENTATIVE HARRINGTON stated that there is a sunset for 1991.

SENATOR MEYER asked Jesse Munro why they can not do this by rule now.

JESSE MUNRO stated that they do not have rule making authority yet.

SENATOR FARRELL asked about the bill of lading. He asked if he were to haul a load in from Oregon and they don't realize he is going to need copies, who will be responsible for making these.

RAY BJORNSON stated they believe that most seed dealers from out of state would provide a bill of lading to the seed transporters. It is illegal to transport seed without it being identified.

JESSE MUNRO stated that each scale has a photocopying machine.

SENATOR WILLIAMS asked what a lawful noxious weed would be.

RAY BJORNSON explained that there is prohibited noxious weeds and restricted noxious weeds. Restricted noxious weeds allows for so many seeds in a specific sample size, where as prohibited is zero, no weed seeds.

SENATOR NOBLE asked how they know if there are weeds in the seeds.

RAY BJORNSON stated that there should be an attached copy of the invoice what quality of seed it is. It will allow the Department to move faster in identifying seeds from out of state. He explained that they had a seed company which the surrounding states have had problems with. They could not catch the company soon enough to get a source of the seed for lab analysis. By having the GVW stations forwarding that information to them they can then pinpoint the source, determine where that company is going and which area they are working at that particular time.

SENATOR FARRELL stated that the GVW already has the authority to ask for the bill of lading and what this bill is doing is changing what has to be on the bill of lading.

JESSE MUNRO stated that was correct.

Closing by Sponsor: REPRESENTATIVE DEMARS closed the hearing on House Bill 572.

HEARING ON HOUSE BILL 559

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE RALPH EUDAILY, District 60 explained that House Bill 559 would provide the manufacturers license plates. The fee will be \$250 and would entitle him to one set of plates. There is a way to revoke these licenses if necessary.

List of Testifying Proponents and What Group they Represent:

Rod Dietz, Northwest Subaru in Missoula
Bob Robinson, Motor Vehicle Division
Steve Turkiewicz, Executive Vice President of the Montana Automobile Dealers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

ROD DIETZ representing the Northwest Subaru stated that this has been a continuous on-going problem on how to properly license their cars which operate within the state. This would greatly benefit the manufacturer, would reduce his operating costs and encourage him to require that his employees reside within the state. It would also assist the dealers because there would be more dealer manufacturers in the state. They would also be able to sell these vehicles within the state, which they currently have had a hardship doing under the current law.

BOB ROBINSON, Motor Vehicle Division stated that this is one little area where the state can do a little to improve the business climate. They don't have to pay a new car license fee every time they get a car for one month to drive around as a demonstrator. They will pay a \$250 fee and rotate the plates from car to car.

STEVE TURKIEWICZ, Executive Vice President of the Montana Auto Dealers Association stated they support House Bill 559. The manufacturers representative is an important link between the dealer and the manufacturer. The more opportunity there is to have it here in this state to utilize the services will be better for the consumer.

Questions From Committee Members: SENATOR WILLIAMS asked about driving the car with this plate and then putting it on the floor room to sell it as a new car.

STEVE TURKIEWICZ explained that it will be sold as a factory rep car.

Closing by Sponsor: REPRESENTATIVE EUDAILY closed the hearing on House Bill 559.

DISPOSITION OF HOUSE BILL 559

Discussion: None

Amendments and Votes: None

Recommendation and Vote: SENATOR WILLIAMS MOVED that HOUSE BILL 559 BE CONCURRED IN.

MOTION PASSED UNANIMOUSLY.

SENATOR WILLIAMS will carry House Bill 559.

HEARING ON HOUSE BILL 245

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE JOE QUILICI, District 71 explained that the House amended the bill until 1990, the Department of Motor Vehicles and the Department of Institutions found out that it would be pretty hard to implement this by that time. They suggested some amendments which will bring the bill back to it's original form. SEE EXHIBIT 4. The license plates will be issued for 4 years. A fee of \$2 is to be paid at the time the new plates are issued. This will be a one time charge. The last time license plates were issued in Montana, except for the centennial plates, was in 1976. The problems which derive from this is that the highway patrol has a hard time distinguishing some of these old plates and can not tell by the stickers if it has been reregistered or not. The tax loss could amount to as much as \$3.5 million dollars from not reregistering. He stated that there may be a need for an appropriation in this bill.

List of Testifying Proponents and What Group they Represent:

Jim Manion, Vice President of Triple A MT
Jerome Anderson, 3M Company
Gordon Morris, Montana Association of Counties
Curt Chisholm, Department of Institutions

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JIM MANION, Vice President of Triple A MT stated they support House Bill 245. The advantage they see, beside bringing in revenue to the counties, is the safety aspect. The use of reflectorization in the plates show a significant decrease in the amount of accidents.

JEROME ANDERSON, Attorney representing the 3M Company showed some samples of plate designs. The 3M Company is the company that provides the reflectorized sheeting. SEE EXHIBIT 5. He stated that he would get together with the budget office to draw up an appropriation amendment. Gordon Morris from the Montana Association of counties has asked that Mr. Anderson express his support for House Bill 245 since he could not attend the hearing due to a conflict of schedules.

CURT CHISHOLM from the Department of Institutions stated that if it is the will of the legislature to issue the plates by 1990, they would try to do so, but everything would need to be finalized by May 1 and sometimes that is not possible. He suggested that it be moved back to 1991. An appropriation has to be made, otherwise the Department could not buy the necessary supplies.

Questions From Committee Members: None

Closing by Sponsor: REPRESENTATIVE QUILICI closed the hearing on House Bill 245.

DISPOSITION OF HOUSE BILL 671

Discussion: Lee Heiman, Legislative Council distributed amendments for House Bill 671. SEE EXHIBIT 6.

Amendments and Votes: SENATOR NOBLE MOVED the AMENDMENTS for HOUSE BILL 671. SEE EXHIBIT 6.

MOTION PASSED UNANIMOUSLY.

Recommendation and Vote: SENATOR NOBLE MOVED that HOUSE BILL 671 BE CONCURRED IN AS AMENDED.

MOTION PASSED UNANIMOUSLY.

SENATOR NOBLE will carry House Bill 671.

DISPOSITION OF HOUSE BILL 595

Discussion: Amendments were given for House Bill 595. SEE EXHIBIT 7.

Amendments and Votes: SENATOR HARP MOVED the AMENDMENTS for HOUSE BILL 595. SEE EXHIBIT 7.

MOTION PASSED UNANIMOUSLY.

Recommendation and Vote: SENATOR HARP MOVED that HOUSE BILL 595 BE CONCURRED IN AS AMENDED.

MOTION PASSED WITH SENATOR NOBLE OPPOSING.

DISPOSITION OF HOUSE BILL 394

Discussion: CHAIRMAN TVEIT announced that the Committee had recalled House Bill 394 for reconsideration due to amendments. SEE EXHIBIT 8.

BOB ROBINSON, Department of Motor Vehicles explained that this was part of Mark Racicot's, Attorney General, package which he had agreed on with the appropriation subcommittee. In his request for appropriation ability to do some of the initiatives that he felt was necessary with the Justice Department. In that proposal he had eliminated the earmarked revenue status of the Motor Vehicle account by putting all that money in the General Fund. Bob Robinson explained that Marc Racicot believes that he should be able to justify his programs as equally as any other program.

Amendments and Votes: SENATOR HARP MOVED the AMENDMENTS for HOUSE BILL 394. SEE EXHIBIT 8.

Recommendation and Vote: SENATOR HARP MOVED that HOUSE BILL 394 BE CONCURRED IN AS AMENDED.

MOTION PASSED with Senator Farrell abstaining.

SENATOR HARP will carry House Bill 394.

DISPOSITION OF HOUSE BILL 464

Discussion: None

Amendments and Votes: None

Recommendation and Vote: SENATOR NOBLE MOVED TO TABLE HOUSE
BILL 464.

MOTION PASSED with Senator Abrams abstaining.

DISPOSITION OF HOUSE JOINT RESOLUTION 12

Discussion: None

Amendments and Votes: None

Recommendation and Vote: SENATOR HARP MOVED that HOUSE
JOINT RESOLUTION BE CONCURRED IN.

MOTION PASSED UNANIMOUSLY.

DISPOSITION OF HOUSE JOINT RESOLUTION 17

Discussion: None

Amendments and Votes: None

Recommendation and Vote: SENATOR WEEDING MOVED that HOUSE
JOINT RESOLUTION 17 BE CONCURRED IN.

MOTION PASSED UNANIMOUSLY.

SENATOR TVEIT will carry HJR 17.

ADJOURNMENT

Adjournment At: 3:00 p.m.



SENATOR LARRY TVEIT, Chairman

LT/pb

senmin.316

ROLL CALL

HIGHWAY

COMMITTEE

DATE March 16, 1989

51st
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
CHAIRMAN TVEIT ✓	✓		
VICE CHAIRMAN MEYER b	✓		
SENATOR ABRAMS	✓		
SENATOR FARRELL	✓		
SENATOR WEEDING	✓		
SENATOR NOBLE ✓	✓		
SENATOR STIMATZ	✓		
SENATOR HARP	✓		
SENATOR WILLIAMS ✓	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT,

We, your committee on Highways and Transportation, having had under consideration HB 689 (third reading copy -- blue), respectfully report that HB 689 be not concurred in.

Sponsor: Harrington (Tveit)

BE NOT CONCURRED IN

Signed: Larry J. Tveit
Larry J. Tveit, Chairman

JJC
3/16/89
4:45
p. 17

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HB 559 (third reading copy -- blue), respectfully report that HB 559 be concurred in.

Sponsor: Eudaily (Williams)

BE CONCURRED IN

Signed: _____

Larry J. Tveit
Larry J. Tveit, Chairman

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HB 671 (third reading copy -- blue), respectfully report that HB 671 be amended and as so amended be concurred in:

Sponsor: Patterson (Noble)

1. Title, line 9.
Following: "RULE"
Insert: "STATUTE"

2. Page 2, line 13.
Following: "rule"
Insert: "and other"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Larry J. Tveit, Chairman

4/1/89
3/16/89
4:45
4:20 PM

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HB 595 (third reading copy -- blue), respectfully report that HB 595 be amended and as so amended be concurred in:

Sponsor: Russell (Yellowtail)

1. Title, line 8.

Following: "FUND"

Insert: "AND DESIGN"

2. Title, line 9.

Strike: "DEPARTMENT"

Insert: "HISTORICAL SOCIETY"

3. Title, line 11.

Following: first occurrence of "AND"

Insert: "GENERAL"

4. Page 1, line 24.

Strike: "DEPARTMENT"

Insert: "preservation review board established in 2-15-1512"

5. Page 2, line 1.

Following: "Montana"

Insert: ", "

Strike: "and"

Following: "Indians"

Insert: ", and the coordinator of Indian affairs"

6. Page 2, line 2.

Following: "HARRERS"

Insert: ", writing the text,"

7. Page 2, lines 7 through 10.

Strike: "THE" on line 7 through "HARKER," on line 10

AND AS AMENDED BE CONCURRED IN

Signed: _____
Larry J. Tveit, Chairman

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HB 394 (third reading copy -- blue), respectfully report that HB 394 be amended and as so amended be concurred in:

Sponsor: Clark (Harp)

1. Page 2, line 3.
Strike: "S4"
Insert: "S3"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Larry J. Tveit, Chairman

Handwritten:
J.E.
3/16/89
3:45
P.M.

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HJR 12 (third reading copy -- blue), respectfully report that HJR 12 be concurred in.

Sponsor: Bradley (Harp)

BE CONCURRED IN

Signed: _____

Larry J. Tveit, Chairman

Y.J.C.
2/16/89
4:45
p.m.

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration HJR 17 (third reading copy -- blue), respectfully report that HJR 17 be concurred in.

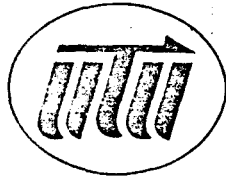
Sponsor: Schye (Tveit)

BE CONCURRED IN

Signed: _____

Larry J. Tveit
Larry J. Tveit, Chairman

41.0
3/16/89
4:45
P.M.



SENATE HIGHWAYS
EXHIBIT NO. 1
DATE 3-16-89
BILL NO. HB 689

united transportation union

MONTANA STATE LEGISLATIVE BOARD

TESTIMONY

Mr. Chairman and Members of the Committee, for the record, I am Raymond West, State Legislative Director for the United Transportation Union.

I feel there is a need for the use of two portable transceivers on all trains departing the home terminal. They can be issued to the Conductor, when going on duty.

There are many trains that carry hazardous materials, such as toxic liquids, flammable liquids, oxidizing materials and explosives. When there are trains carrying these kind of dangerous materials across Montana, we should be concerned as responsible Citizens. That all FRA rules and regulations be followed.

The Conductor has shipping papers on all hazardous materials in the train. When Brakemen are making walking inspection of the train and finds a car leaking. He should call the Conductor to find out what the car is loaded with. There are instructions on how the car should be handled in case of derailment or is leaking.

At other times when the use of portable transceivers are needed is when there has been a road crossing accident. By the time a train gets stopped it will be a mile down the track from where it hit the car. That means when train crew gets back where they can be of some assistance to the injured people, they need to have radio communication with the Engineer. He has direct communication with the train Dispatcher, who can get additional help if needed.

In some situations that could be the difference between life or death, that should indicate alone, there is a need for portable transceivers.

I have 38 years service on the railroad, as a Brakeman and as a Conductor, therefore, I think that I am qualified to talk about what safety means to the Employees and the public. I think the railroads are considerate to any suggestions that would improve on safety and performance of the train operation.

House bill 689 will do all these things that I have mentioned at a minimum cost to the railroads, for the benefits portable transceivers would provide. In some places the railroad does provide some portable radios, but the supply is not meeting the demand.

I urge you to support house bill 689 and recommend a do pass.

Thank You

PROPOSED AMENDMENTS TO HB 689

1. Page 1, Line 11, following "provide", strike "at least".
2. Page 1, Line 13, following "state" insert "except that the locomotive engineer is not required to have a transceiver".
3. Page 1, Line 17, strike all of subsection 2 through Line 19.
4. Page 1, Line 22, following "receiver", strike ",,".
5. Page 1, Line 23, strike "with 5-watt power".
6. Page 2, following line 1, insert: (5) Nothing in this section shall prevent or prohibit a railroad subject to its provisions from assigning transceivers to individual employees, requiring employees to submit a deposit on such transceivers or requiring employees to share in the purchase of such transceivers, not to exceed one-third of the purchase price of the transceiver.

SENATE HIGHWAYS
EXHIBIT NO. 3
DATE 3-16-89
BILL NO. HB 572

TESTIMONY
HOUSE BILL 572
(NOTIFICATION OF AGRICULTURAL SEED SHIPMENTS)

It is widely known that the spread of noxious weeds is one of the most serious problems facing agriculture in Montana. There are numerous ways of spreading noxious weeds, however, one of the most damaging but preventable methods is when farmers inadvertently spread noxious weeds by planting agricultural seed which is contaminated with noxious weed seeds.

Montana's present Seed Law allows no tolerance for prohibited noxious weed seeds in agricultural seed. The problem has been in the monitoring and enforcement of this provision. There have been several situations where seed companies have mistakenly sent noxious weed contaminated agricultural seed into Montana. There have even been a couple of cases where unscrupulous seed companies knowingly shipped poor quality contaminated seed to unsuspecting Montana farmers. Unfortunately the department was not made aware of these particular cases until after the contaminated seed was already planted.

Presently there is no requirement that seed companies notify the department when making shipments into Montana, so the department has no means of knowing when or to whom seed

shipments are made. The department, therefore, most often does not have the opportunity to sample the seed before planting. Aggravating this situation is the fact that in the rush of spring planting, farmers often begin planting the seed very soon after receiving the shipment. By the time the department has determined that a contaminated shipment has been made, the seed is often already planted and the damage already done.

The proposed amendment in House Bill 572 would help prevent this problem. Upon notification of shipment of seeds the department's field inspectors could be "waiting at the farmers door" to sample the seed prior to planting, thus preventing the inadvertent planting of noxious weed seeds contained in the agricultural seed.

The specific amendments requested in House Bill 572 are:

(1) Page 2, lines 8 and 9 and page 4 lines 13 through 17; These amendments would require the Gross Vehicle Weight personnel of the Department of Highways to make copies of any bills of lading for seed shipments going through their weigh stations; and then forwarding the copies on to the Department of Agriculture.

(2) Page 6, line 21 through 25 and page 7, line 1 through 4;

This amendment to the Agricultural Seed Law would require all seed dealers to have a bill of lading for each seed shipment. The amendment specifies that certain information such as seller, buyer, and destination be listed in the bill of lading.

It is hoped that these amendments requiring notification of seed shipments will help in the fight against noxious weeds. The amendment will not significantly increase the workload or cost required of state government, or the public, but will greatly increase the effective enforcement of our noxious weed seed laws.

SENATE HIGHWAYS

EXHIBIT NO. 4

DATE 3-16-89

HB 245

Amendments to HB 245, Third Reading Copy
Before the Senate Committee on Highways and Transportation

1. Title, Line 10

Following: "1991"
Strike: "1990"
Insert: "1991"

2. Title, Line 11

Following: "In"
Strike: "1994"
Insert: "1995"

3. Page 3, Line 5

Following: "1991"
Strike: "1990"
Insert: "1991"

4. Page 3, Line 11

Following: "January 1"
Strike: "1994"
Insert: "1995"

5. Page 11, Line 10

Following: "December 31"
Strike: "1989"
Insert: "1990"

FACTS IN SUPPORT OF HOUSE BILL 245

- I. House Bill 245, as amended by the Highway Committee, provides for the following:
- (a) A new general issue of motor vehicle license plates to commence issuing on January 1, 1990.
 - (b) Extending the use of the Centennial license plates through 1996.
 - (c) The creation of a new design for license plates.
 - (d) The plate issue is for four years with another issue to be made in 1994.
 - (e) A fee of \$2.00 to be paid at the time the new plates are obtained. This is a one-time fee to be paid only when new plates are issued.
- II.
- (a) The last general issue of license plates was made in 1976 when the Bi-Centennial plate was issued.
 - (b) The special Centennial plate issue was authorized in 1985 and was to terminate on July 1, 1991. This bill extends the use of these plates through 1996.
 - (c) The plate issue made in 1976 was expected to be for a four year period. It has been used for 13 years.
 - (d) The fact that the same general plate design has been used for so many years makes it difficult for law enforcement agencies to enforce the requirement that automobiles and other motor vehicles be re-registered every year.
 - (e) A Highway Patrol report shows that during the period January 1988 through October 1988 12.3% of the contacts made by the Highway Patrol related to registration violations.
 - (f) The loss of tax monies to the counties due to failure to re-register motor vehicles can easily be computed. Using a violation rate of only 10% of the total vehicles in Montana being unregistered and a conservative figure of tax revenue of an average of \$40.00 per vehicle, the amount of money realized by counties throughout Montana by enforcement of the re-registration requirement appears to be at least \$3,537,200.

Clearly there must be more unregistered vehicles that have not been found. A new plate issue would assist in the re-registration of all vehicles and the collection of additional tax revenues through such re-registration. It would also assist in enforcement by law enforcement agencies.

Some projected examples of revenues to counties are as follows:

Cascade	-	\$318,508.00
Custer	-	\$ 51,748.00
Deer Lodge	-	\$ 42,420.00
Flathead	-	\$268,688.00
Gallatin	-	\$199,104.00
Golden Valley	-	\$ 5,356.00
Hill	-	\$ 77,572.00
Lake	-	\$ 93,776.00
Richland	-	\$ 56,940.00
Silver Bow	-	\$137,560.00
Yellowstone	-	\$465,672.00

III. The Fiscal Note - relates to an issue in 1991 -

- (a) Indicates a difference in expenditures relating to a new plate issue of \$2,162,500. Under the 1990 issue date this would be the cost of the new issue.
- (b) This figure is based upon plates costing \$1.13 a piece. That figure has been adjusted to \$1.08 a piece and may be lower by the time material purchases are made.
- (c) The bill provides for the \$2.00 fee to be paid when plates are obtained.

Today when you replace plates, you pay a \$2.00 fee under Section 61-3-333 M.C.A.

- (d) The \$2.00 fee will bring in \$2,032,000 to be applied to the cost of the plate issue. This is from the 1,016,000 registrations that are anticipated.

IV. Under the law, the plate design shall be determined by the Department of Justice.

- V. The new plate design will also apply to all personalized plates and other special plates other than those Centennial plates which vehicle owners may wish to retain.
- VI. This bill retains the two plate issue. Law enforcement agencies, the Police, Highway Patrol, Sheriffs, and Customs Authorities all unanimously endorse the need for two plates. They also endorse the use of reflectorized material on the plates.
- VII. The bill is supported by the Montana Automobile Dealer's Association, the Highway Users' Conference, and the Montana Association of Counties.

Jerome Anderson, 3M Company

SENATE HIGHWAYS

EXHIBIT NO. 6

DATE 3-16-89

BILL NO. HB671

Amendments to House Bill No. 671
Third Reading Copy

For the Committee on Highways and Transportation

Prepared by Lee Heiman
March 16, 1989

1. Title, line 9.
Following: "RULE"
Insert: "STATUTE"

2. Page 2, line 13.
Following: "rule"
Insert: "and other"

Amendments to House Bill No. 595
Third Reading CopyRequested by Department of Highways
For the Committee on Highways and TransportationPrepared by Lee Heiman
March 13, 1989

1. Title, line 8.

Following: "FUND"Insert: "AND DESIGN"

2. Title, line 9.

Strike: "DEPARTMENT"Insert: "HISTORICAL SOCIETY"

3. Title, line 11.

Following: first occurrence of "AND"Insert: "GENERAL"

4. Page 1, line 24.

Strike: "DEPARTMENT"Insert: "preservation review board established in 2-15-1512"

5. Page 2, line 1.

Following: "Montana"Insert: ","Strike: "and"Following: "Indians"Insert: ", and the coordinator of Indian affairs"

6. Page 2, line 2.

Following: "MARKERS"Insert: ", writing the text,"

7. Page 2, lines 7 through 10.

Strike: "THE" on line 7 through "MARKER." on line 10

SENATE HIGHWAYS

EXHIBIT NO. 8

DATE 3-16-89

BILL NO. ~~204~~ HB 394

Amendments to House Bill No. 394
Third Reading Copy

For the Committee on Highways

Prepared by Lee Heiman
March 16, 1989

1. Page 2, line 3.
Strike: "\$4"
Insert: "\$3"

Amendments to House Bill No. 464
Third Reading Copy

Requested by Representative Bradley
Gray Bill Contents (Edited)
Including Individual Amendment of Pg 7 of Gray Bill

Prepared by Paul Verdon
and Lee Heiman
March 10, 1989

1. Title, line 5.

Following: "OF"

Insert: "RETAIL"

2. Page 1, line 13.

Strike: "Petroleum Trade Practices"

Insert: "Retail Motor Fuel Marketing"

3. Page 1, line 14.

Following: "Purpose."

Insert: "(1)"

4. Page 1, line 20.

Following: "income."

Insert: "(2) The legislature finds that unfair competition in the marketing of motor fuel occurs whenever costs associated with the marketing of motor fuel are recovered from other operations, allowing the refined motor fuel to be sold at subsidized prices. Those subsidies most commonly occur in one of three ways:

(a) when a refiner uses profits from refining of crude oil to cover below normal or negative returns earned from motor fuel marketing operations;

(b) when a marketer with more than one location uses profit from one location to cover losses from below-cost selling of motor fuel at another location; and

(c) when a business uses profits from sales other than motor fuel sales to cover losses from below-cost selling of motor fuel.

(3)"

5. Page 1, line 22.

Following: "trade"

Insert: "; and independent motor fuel marketers, including dealers, distributors, jobbers, and wholesalers, are unable to survive predatory subsidized pricing.

(4)"

6. Page 2, line 2.

Following: "pricing."

Insert: "(5)"

7. Page 2, line 8 through page 4, line 1.

Strike: subsections (1) and (2) in their entirety

Insert: "(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof of lesser cost, is 3% of the delivered cost of motor fuel for wholesale sales and 6% of delivered cost of motor fuel for retail sales. In other cases, the term means and includes all costs incurred in the conduct of business, including but not limited to:

(a) labor, including salaries of executives and officers;

(b) rent that is not less than the fair market value based on current use;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) losses due to breakage or damage;

(h) credit card fees or other charges;

(i) credit losses; and

(j) all licenses, taxes, insurance, and advertising."

(3) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

(4) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at that terminal or does not post such a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

(5) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet."

Renumber: subsequent subsections

8. Page 4, line 8.

Strike: subsection (5) in its entirety

Insert: "(8) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel at which a refiner, producer, or person offers motor fuel for sale or transfer to itself or

any related or unrelated person.

(9) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person."

Renumber: subsequent subsections

9. Page 4, line 15 through line 17.

Following: "of" on line 15

Strike: remainder of line 15 and through "business" on line 17

Insert: "selling motor fuel at a retail motor fuel outlet.

(11) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the selling and delivery of the fuel is the primary source of revenue of that business."

Renumber: subsequent subsections

10. Page 4, line 18.

Strike: "at retail"

Following: "transfer"

Insert: ", gift, sale, offer for sale, or advertisement for sale in any manner or by any means"

11. Page 4, lines 19 through 22.

Strike: lines 19 through 21 in their entirety and through "processing" on line 22

Insert: ", including a transfer of motor fuel by a person to himself or to his affiliate"

12. Page 4, line 23 through page 5, line 5.

Strike: subsections (8) and (9) in their entirety

Insert: "(13) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet."

Renumber: subsequent subsections

13. Page 5, line 9.

Strike: "FOR THE IMMEDIATE MARKET AREA CONCERNED"

14. Page 5, lines 10 through 12.

Strike: subsection (11) in its entirety

Renumber: subsequent subsection

15. Page 5, lines 14 through 16.

Following: "sales" on line 14

Strike: remainder of line 14 through "business" on line 16

Insert: "of motor fuel to a retail motor fuel outlet"

16. Page 5, line 18.

Strike: "retailer"

Insert: "wholesaler"

17. Page 5, lines 18 and 19.

Following: "sell" on line 18

Strike: remainder of line 18 through "retailer" on line 19
Insert: "motor fuel to a retail motor fuel outlet at less than
the delivered cost of the motor fuel plus the cost of doing
business"

18. Page 5, line 21 through page 6, line 2.
Following: "competition" on line 21
Strike: remainder of line 21 through "30-14-213" on line 2

19. Page 6, line 3.
Strike: "refuse to"

20. Page 6, lines 3 through 9.
Following: "sell" on line 2
Strike: remainder of line 2 through "public" on line 9
Insert: "motor fuel".

21. Page 6, line 9.
Following: "than the"
Insert: "delivered"

22. Page 6, lines 9 through 12.
Following: "cost" on line 9
Strike: remainder of line 9 through "exempt" on line 12
Insert: "of the motor fuel plus the cost of doing business if the
effect is to injure or destroy competition or substantially
lessen competition"

23. Page 6, line 13.
Strike: "vertically integrated producer or"

24. Page 6, line 14.
Strike: "a"

25. Page 6, line 15.
Strike: "its own"
Insert: "itself or an affiliate for resale at a"
Following: "retail"
Insert: "motor fuel"
Following: "at a"
Insert: "transfer"
Following: "at a price"
Insert: "that is below cost or"

26. Page 6, lines 15 and 16.
Following: "the price" on line 15
Strike: remainder of line 15 through "that" on line 16

27. Page 6, line 16.
Following: "~~distillate~~"
Insert: "the wholesaler charges another retail"

28. Page 6, lines 16 through 22.
Following: "FUEL" on line 16
Strike: remainder of line 16 through "act]." on line 22

Insert: "outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

(4) the provisions of [this act] do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuel is advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

~~(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost. Nothing in [this act] prevents a wholesaler or retailer from advertising, offering to sell, or selling a motor fuel at a price made in good faith to mee an equally low price of a competitor. [Change made by individual amendment presented at hearing]~~ The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankrupt sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in [section 3], but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section."

29. Page 6, line 23 through page 8, line 10.

Strike: subsection (4) and sections 5 and 6 in their entirety

Insert: "NEW SECTION. Section 5. Voidance of existing contracts.

A contract, express or implied, made by a person in violation of a provision of [this act] is void and no recovery may be had on that contract."

Renumber: subsequent sections

30. Page 9, lines 5 through 14.
Strike: section 9 in it entirety
Renumber: subsequent sections

-END-



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Senate Highways
Exhibit #10
HB 464
3/16/89

March 13, 1988

The Honorable Gene Thayer
Chairman
Business and Industry Committee
Montana State Senate
Capitol Station
Helena, Montana 59620

Dear Chairman Thayer:

The staff of the Federal Trade Commission¹ is pleased to submit this letter in response to your request for comments on the potential competitive effects of House Bill 464, a bill that would in general regulate gasoline prices by prescribing minimum price levels and prohibiting price discrimination. Your letter notes that H.B. 464 has already been passed by the Montana House of Representatives and will be taken up shortly by your Committee. We believe that H.B. 464 is anticompetitive and that, if the bill is enacted, Montana consumers and visitors could pay higher prices for gasoline.

Interest and experience of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive practices in or affecting commerce. 15 U.S.C. § 45. Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. In particular, the Commission and its staff have had considerable experience assessing the competitive impact of regulations and business practices in the oil industry.²

¹ These Comments are the views of the staff of the Bureau of Competition of the Federal Trade Commission, and do not necessarily represent the views of the Commission itself or any individual Commissioner.

² The Commission's staff has gained extensive experience with energy competition issues by conducting studies, investigations, and law enforcement actions. FTC staff comments and testimony to legislative bodies have identified the costs of proposed gasoline retailing divorcement and "below-cost selling" legislation for North Carolina, South Carolina, Georgia, Alabama, Tennessee, Washington, Hawaii, Nevada, and for the United States Senate and House of Representatives. The Commission and its staff have also gained considerable experience with gasoline refining and marketing issues affecting consumers from premerger antitrust reviews pursuant to Sections 7 and 7A of the Clayton

Description of H.B. 464

Section 4 of H.B. 464 would, inter alia, prohibit retailers from selling gasoline in Montana at prices below costs, as defined in Section 3, "if the effect is to injure or destroy competition or substantially lessen competition" ³ "Cost to retailer" is defined as "the current invoice cost of motor fuel to the retailer within 30 days prior to the date of sale or the replacement cost . . . , whichever is lower," less most trade discounts, plus other specified costs of doing business, such as taxes, transportation costs, and a share of overhead costs. Section 4 would also prohibit a vertically integrated producer or wholesaler from selling a petroleum distillate to its own retail outlet at a price lower than the price charged any other, competing retailer. Further, gasoline purchased from others for sale in supplier-owned gasoline stations would have to be sold at retail prices that are at least eight percent above the wholesale prices that those retailers' suppliers charge other customers.

Section 5 of the bill would prohibit suppliers or wholesalers of gasoline from discriminating in price, "if the discrimination substantially lessens competition or tends to create a monopoly or to injure, destroy, or prevent competition with a person in the marketing of motor fuel in the community where the supplier or wholesaler is selling at a lower price." Sections 7 and 8 provide for civil penalties, cease and desist orders, and injunctions to remedy violations of Section 4; the bill appears to contain no remedy for violations of Section 5, the price discrimination provision.

Claims of predatory, monopolistic or collusive activities by refiners against gasoline dealers may not be well-founded

The premise of H.B. 464, as stated in Section 2, is that independent and small retailers and wholesalers are being victimized by "subsidized pricing, which is inherently unfair and destructive." Several studies of competition in gasoline marketing in the United States since 1981 have concluded that gasoline dealers and distributors have not been and are not likely to become targets of anticompetitive practices by their suppliers, although these studies do not contain information about Montana. In light of these studies, discussed below, you may wish to examine any claims by Montana gasoline dealers to be sure that the claims are well-founded.

Act, 15 U.S.C. §§ 18, 18a.

³ Section 4(1)(a)-(b) specifies further exceptions for unusual circumstances, such as isolated sales, clearance sales, or sales to aid charitable causes.

Federal studies

Following enactment of Title III of the Petroleum Marketing Practices Act ("PMPA") in 1978, 15 U.S.C. Sec. 2841, the Department of Energy ("DOE") studied whether the alleged "subsidization" of retail gasoline operations by the major refiners actually existed, and, if it did, whether the practice was predatory or anticompetitive. The final report to Congress, published in January of 1981, was based on an extensive study of 1978 pricing data in several Standard Metropolitan Statistical Areas, as well as on internal oil company documents subpoenaed by the DOE investigating staff. DOE found no evidence of such "subsidization".⁴

In 1984, DOE published an updated study that further substantiated and elaborated on its 1981 findings.⁵ The study showed that company-operated stations were not increasing as a percentage of all retail outlets, except among the smaller refiners. DOE concluded that the increased pressures on gasoline retailers since 1981 were not caused by anticompetitive behavior on the part of the major oil companies. Rather, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers were due to decreased consumer demand for gasoline and a continuing trend toward the use of more efficient, high-volume retail outlets.⁶

State studies

In 1986, the Washington state attorney general initiated a study of motor fuel pricing in that state to determine whether subsidization had occurred or was occurring. The study focused on whether major oil companies injured competition by charging lessee-dealers higher prices for gasoline than the companies were charging their own, company-operated retail stations. The study also sought to examine whether the major oil companies injured competition by establishing a structure of retail and wholesale prices that foreclosed the ability of dealers to cover their costs. Information was gathered on the practices of all eight of the major companies in Washington for a three-year sample period. The study covered regions throughout the state where the companies had retail operations and sold to lessee-dealers. The Final Report concluded that instances of significant price variation among lessee-dealers and company-operated retailers were "clearly too infrequent" to support any claim that lessee-

⁴ DOE, Final Report: The State of Competition in Gasoline Marketing, 1981.

⁵ DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers (March, 1984) [hereinafter cited as 1984 DOE Report].

⁶ Id. at 125-32.

dealers' gasoline purchase costs were higher than the retail prices of competing company-operated stations, and that these dealers were being systematically driven from the market.⁷

More recently, in 1987, the Arizona legislature created a Joint Legislative Study Committee on Petroleum Pricing and Marketing Practices and Producer Retail Divorcement. In December 1988, after more than a year of extensive inquiry and analysis, the Final Report recommended that no new legislation be enacted, concluding that "[t]he marketplace for petroleum products is very competitive in Arizona."⁸

The state and DOE studies have revealed no instances of predatory behavior by major gasoline refiners. Rather, they show that the fortunes of refiners and their franchised retailers are closely linked, and that these firms "form a mutually supporting system backed by company advertising and promotion."⁹ Independent franchised retailers have continued to be by far the predominant form of outlet for the direct gasoline sales of major, integrated refiners.¹⁰ Indeed, major refiners operate only a small percentage of the gasoline stations in the United States.¹¹ Given the importance of the branded, franchised marketing distribution system, major refiners are unlikely to charge discriminatory prices that would cause their franchised retailers to seek new sources of supply or to go out of business. A refiner that undertook such a course of action would probably

⁷ Final Report to the Washington State Legislature on the Attorney General's Investigation of Retail Gasoline Marketing, August 12, 1987, at 14.

⁸ Final Report to the Arizona Joint Legislative Study Committee on Petroleum Pricing and Marketing Practices and Producer Retail Divorcement, December, 1988, at 35.

⁹ 1984 DOE report, supra, at ii. We do not mean to suggest that the fortunes of refiners and their franchised retailers are perfectly linked, only that the studies have found a preponderance of evidence that in general the refiners and their retailers share common goals. Although our information for these propositions comes from 1984 reports and articles, we have no reason to believe that the distribution structure has significantly changed since that time.

¹⁰ In 1981, the eight largest refiners, who in the aggregate, accounted for about half of all gasoline sales, sold approximately eight times more gasoline through lessee dealers than through company-operated outlets. Id. at 146 (Table A-10).

¹¹ Lundberg Letter, Vol. XI, No. 36, July 6, 1984, at 3, where it was reported that the major refiners operated only about 3.3% of all retail stations.

face a decrease in market share, an increase in excess refining capacity, and higher per unit costs. Thus, the major integrated refiners are not likely to engage in predation against the mainstay of their own retail distribution systems, their franchised retailers.

Even if predatory behavior were found, it is already
subject to prosecution under existing state and
federal laws

Predatory conduct in the petroleum industry is subject to the Sherman Act, the Clayton Act, and the Federal Trade Commission Act, and at the state level, the Montana Unfair Trade Practices Law.¹² These statutes address possible anticompetitive practices in the industry more effectively than would legislation regulating gasoline markets. The existing antitrust laws deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs of operation through vertical integration. In contrast, the price regulation envisioned by H.B. 464 would deny firms the flexibility to adjust their prices in response to changing conditions of demand and supply. Such legislation is likely to add costs to the distribution of gasoline in Montana that do not exist in other states, costs that would be borne by Montana consumers and visitors.

In addition, many of the apparent concerns of the sponsors of H.B. 464 in redressing alleged anticompetitive abuses associated with refiner-owned and operated gasoline stations are addressed by the existing federal Petroleum Marketing Practices Act of 1978, supra.¹³ The legislative history of the PMPA shows that Congress was concerned about these same alleged abuses of the franchise relationship, and that the PMPA was intended to balance the rights of the respective parties to retail gasoline franchise agreements.¹⁴

The price and allocation regulatory features
of H.B. 464 will lead to higher gasoline prices

Enactment of H.B. 464 is likely to have several adverse consequences for consumers. Because of the uniform mark-up provision of the bill, retailers might be unable to operate

¹² Mont. Code Ann. §§ 30-14-201-224 (1985).

¹³ The PMPA establishes certain notice requirements with respect to cancellation and nonrenewal of contracts between franchisors and franchisees, and creates a private claim for violation by franchisors, enforceable in federal courts.

¹⁴ See S. Rep. No. 731, 95th Cong., 2d Sess., 15-19, 29-43, reprinted in 1978 U.S. Code Cong. & Ad. News 873.

discount outlets, which trade a smaller profit margin for larger volume. In addition, short term price discounts designed to attract new customers would be deterred. The result is likely to be rigid, uniformly higher, retail gasoline prices within Montana. H.B. 464 may also prevent refiners from capturing the efficiencies of vertical integration, which can often reduce transaction and search costs and lower prices to consumers.¹⁵

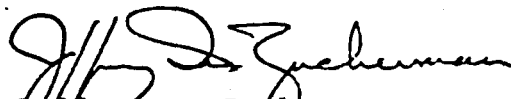
In enforcing the federal price discrimination law, the Robinson-Patman Act, 15 U.S.C. § 13, the Commission is careful to avoid discouraging firms from engaging in lawful price discrimination, which often operates to destroy cartel pricing.¹⁶ Moreover, changing market conditions frequently are manifested in temporary discriminatory pricing patterns. Especially because it prohibits price discrimination that injures competitors, but not necessarily competition in the market, H.B. 464 may have the effect of inhibiting efficient, pro-competitive pricing practices. Firms may become insulated from competition, and pricing may become rigid. The bill, therefore, if enacted, may well result in higher profits for all gasoline refiners and marketers through higher prices for Montana consumers.

Conclusion

For the reasons stated above, we believe that H.B. 464, if enacted, would tend to insulate gasoline refiners and marketers from competition, and thereby could cause gasoline prices in Montana to increase.

We appreciate the opportunity to comment on H.B. 464. Please feel free to contact us if we can be of further assistance.

Sincerely,


Jeffrey I. Zuckerman
Director

¹⁵ For example, vertical integration reduces the costs of contracting with various retailers and reduces coordination problems between different distribution levels.

¹⁶ See generally Schwartz, The Perverse Effects of the Robinson-Patman Act, United States Dept. of Justice, Antitrust Division, Economic Analysis Group Discussion Paper 86-12, July 30, 1986, at 8-10.



HB 464
3/16/89

MONTANA PETROLEUM ASSOCIATION
A Division of the
Rocky Mountain Oil and Gas Association

Senate Highway
Exhibit # 10

Helena Office
2030 11th Avenue, Suite 23
Helena, Montana 59601
(406) 442-7582

Janelle K. Fallan
Executive Director

Billings Office
The Grand Building, Suite 510
P.O. Box 1398
Billings, Montana 59103
(406) 252-3871

March 15, 1989

To: Members, Senate Highways Committee
From: Janelle Fallan, Executive Director
Re: HB 464

You may recall that during the testimony on HB 464 on Tuesday, I referred to a letter that had been requested from the Federal Trade Commission but that had not yet arrived. The letter came in late Tuesday afternoon and is enclosed. (It is addressed to Sen. Gene Thayer because it was originally thought that HB 464 would be heard by the Senate Business and Industry Committee. Sen. Thayer is pleased to share the letter with you.)

The letter describes HB 464 as "anticompetitive and, ... if the bill is enacted, Montana consumers and visitors could pay higher prices for gasoline." It also states, "Several studies of competition in gasoline marketing in the United States since 1981 have concluded that gasoline dealers and distributors have not been and are not likely to become targets of anticompetitive practices by their suppliers..."

Also referred to is the Washington state study, which was discussed during testimony: "The Final Report concluded that instances of significant price variation among lessee-dealers and company-operated retailers were 'clearly too infrequent' to support any claim that lessee-dealers' gasoline purchase costs were higher than the retail prices of competing company-operated stations, and that these dealers were being systematically driven from the market."

The letter concludes, "...we believe that HB 464 ... would tend to insulate gasoline refiners and marketers from competition, and thereby could cause gasoline prices in Montana to increase."

Thank you sincerely for taking the time to read this letter.

COMMITTEE ON HIGHWAYS AND TRANSPORTATION

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Lyle Nagel	Mt. St. Vol Firefighters Assn	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pat Finn	Deer Valley Northern	HB689	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Raymond West	UTU	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHARLEY CHAMBERS	MRL	HB689	<input type="checkbox"/>	<input checked="" type="checkbox"/>
TIM BAUER	PSC	HB689	<input type="checkbox"/>	<input type="checkbox"/>
Phil Anderson	Helena Self	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Edward L Fliors	MSCPFF Helena	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
D. B. Ditzel	Bro. of Locomotive Engrs	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JAMES T. MUIR	MONTELLA JOINT RAIL LABOR COUNCIL	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carl Knutson	Bro. Mts. Way Emps	HB689	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gordon Morris	MALC	HB245	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JIM MANION	RAA MONTANA	HB245	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Steve Turkiewicz	Mr Auto Dealers	HB559	<input checked="" type="checkbox"/>	<input type="checkbox"/>