

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN BARRY STANG**, on February 7, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Barry "Spook" Stang, Chairman (D)
Floyd "Bob" Gervais, Vice-Chairman (D)
Ernest Bergsagel (R)
Robert Clark (R)
Jane DeBruycker (D)
Alvin Ellis, Jr. (R)
Gary Feland (R)
Mike Foster (R)
Patrick Galvin (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Jim Madison (D)
Linda Nelson (D)
Don Steppler (D)
Howard Toole (D)
Rolph Tunby (R)

Members Absent: Rep. Alvin Ellis, Jr.

Staff Present: Valencia Lane, Legislative Council
Claudia Johnson, Committee Secretary

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

HEARING ON HB 37

Presentation and Opening Statement by Sponsor:

REP. ERVIN DAVIS, House District 53, Charlo, informed the Committee that HB 37 is basically the same bill which was heard in 1987 and 1989. The only difference this session is HB 37 simply asks that the provision for exempting from restriction on the vehicles carrying perishable agricultural seed potatoes be on a permanent basis to allow the Montana Certified Seed Potato growers some stability. He has been in contact with the state highway supervisor in Lake County as to any known road damage being attributed to seed potato haulers. As the road begins to

show damage in the spring of the year, reports indicate that the damage had begun to show up before the seed potato growers began to ship. The seed potato growers in Montana do not want to place their business in jeopardy. The law requires any hauler in violation must return to the point of loading, and in most cases, is asked by the grower never to return. For the past three seasons he has been the watch dog during that 4 to 6 week period of concentrated hauling. This past season he asked the Gross Vehicle Weight Division (GVW), State Highway Department to set up portable scales on Highway 212 to run a spot check which includes the seed potato haulers. Not one single citation was issued on that highway to a single seed potato hauler. Nor were any citations issued to a seed potato hauler on any of the adjacent highways during that time period; Highway 35, Highway 28, Highway 93, Highway 200, Highway 135, nor the round Butte highway, running west from the city of Ronan. He felt that was quite a record. Exhibit 1

Proponents' Testimony:

Don Lake, Lake County, stated his support for HB 37. EXHIBIT 2

Sid Schutter, farmer, Manhattan area, said he is in support of HB 37. EXHIBIT 3

John Crumley, McAllister, MT, informed the committee that the law has worked well for the few years it has been in effect. HB 37 would keep the law in effect for a longer period of time. Load limits placed on seed trucks hauling potatoes from Montana would increase costs from 38 cents to \$1.30 per hundred weight. This is based on a 10 inch wheel width, 400 lb. per inch width, 18 wheel truck, legally hauling 80,000 lbs. This amounts to a reduction down to 72,000 lbs. This reduces the legal hauling limit by 20%, therefore, if it costs \$2.00 per hundred weight to haul, there would be an 20% increase of .40 cents. It improves the other states ability to sell for less than Montana. This would be detrimental to have these load limits placed on the trucks hauling only during these three months.

Sam Hoffman, Manhattan, MT, said that HB 37 was placed before the committee because the Highway Department was harassing the people hauling these products. He urged the committee to support this bill.

Art Mangels, Polson, MT, said they have had harassment from the Highway Department. The trucks have been fined on the spot before they got to the first legal scale which is 9 miles south of Ronan. These trucks are watched very closely. The time for shipping is late March, April and the first part of May. If they don't move at that time, the potatoes cannot be sold. It's a perishable product. He urged a do pass for HB 37.

Mike Sun, Potato Specialist, Montana State University, said that HB 37 is very important to Montana's agriculture, particularly to

the perishable agricultural seed which has very limited delivery time. This bill will make it easier to deliver the product out of state, help reduce the cost of shipping and therefore make it more competitive in the market. It will help the economy of Montana.

Opponents' Testimony:

Gary Gilmore, Division Administrator of Operations Division, Montana Department of Highways, said during the spring, most of the highways are vulnerable for damage. Road beds are soft due to melting snow in the ditches, seasonable precipitation, freeze thaw cycles, spring run off, frost coming out of the ground which prohibits the surface and sub-surface moisture from going into the ground. Results are saturated roadways with the only stability being the pavement. Every load has potential to do damage. The heavier the load, the more the damage. This relationship of weight to damage is progressive. If the weight doubles, the effect on the roadway is not doubled, it may be ten, twenty, thirty or even more times damaging. Conversely, cutting the load in half does not cut the effect of the damage in half, but will decrease it by ten, twenty, thirty or more times. Even if no physical damage is seen to the pavement, effects and damage are occurring under the pavement. Moisture is pumping into the subgrade, ****gravels are being contaminated by soils being pumped into the moisture. This creates a mixing action under the pavement resulting in a roadway that has a load carrying capability that is greatly reduced. When these conditions occur, even a few trucks can totally destroy the surface of the roadway. These effects are more damaging on older roads than on newer ones. But the effects are present on all roads. The department cannot say that restricting all loads will eliminate damage, but it will definitely and substantially reduce the damage. This is why the Department of Highways is opposed to HB 37.

Dave Galt, Administrator of the Gross Vehicle Weight Division, Department of Highways, said if a GVW officer is in a position of restrictive role of weighing a truck with any commodity that has exceeded the load limit, is issuing a ticket, and a load of potatoes goes by that is heavier than the one they are writing the ticket to, they are forced to let that potato truck go. It places the officers in an unusual position as far as enforcing the weight limits. In the last four years, the Department of Highways has tried to help the situation in the Flathead Valley and Ronan area, by opening up Highway 93 as a corridor to the interstate in Missoula. Interstates are not restricted by load limits. Therefore, by opening Highway 93, will allow routes to the interstates so the potatoes can get out of the state. Last year the weight was increased on the front axle so they can carry the load limit because of the new designed trucks. These new weight limits would allow a truck to carry 12,000 lbs on the steering axle, bringing up the gross to 76,000 lbs on an average 5 axle semi. Citations written last year to potato carriers included the first one at the Bozeman scale on the January 6.

The last citation that was written to a vehicle hauling potatoes, occurred on June 23 at a scale in Billings on the interstate. Of all the citations, 30 were written to potato carriers all year during the spring breakup. Six of those citations occurred in the northwest part of the state, five of them were issued at the Haugan weigh station which is on I-90, 12 miles from the Idaho border. If this bill is passed, it will allow a potato truck to haul 80,000 legal gross weight. It will allow that truck to receive the 5% tolerance that is granted for all vehicles. That tolerance would lift the maximum allowed on a group of axles before a citation is issued to 35,700 lbs on a tandem and 84,000 lbs GVW. The average overweight on the citations issued was approximately 3,000 lbs. The Department of Highways is opposed to HB 37.

Questions from Committee Members:

REP. LARSON asked Russell Riggs, maintenance chief of the Missoula Division, Department of Highways, to explain to the committee what is happening to the roads. Mr. Riggs informed the Committee the road damage occurs because of concentrated hauling across restrictive routes is an aggravation of things that will happen on an annual basis because of structurally deficient highways that were built 30 to 40 years ago that were not designed to carry the kind of loads that are allowed on the highways today. When a route is restricted, it is being protected from becoming damaged faster than it normally would. By reducing loads or forcing trucks to use other routes during the spring break up, a considerable amount of repair cost is being saved.

REP. GERVAIS asked what was meant by "if certain conditions were met" in the title of the bill. REP. DAVIS said the seed potato haulers are allowed to haul potatoes by gross vehicle weight, that is the condition. The second condition is if a road has a speed restriction, the trucks have to abide by those restrictions.

REP. CLARK asked if only potato seeds or all agricultural seeds were being dealt with in this bill. REP. DAVIS replied that agricultural perishable products were being dealt with here. To his knowledge this is the only agricultural perishable product in Montana that has to get out of the state by a time frame.

REP. CLARK asked if it should specify potato seeds or leave it as broad as it is. Mr. Lake said that he was instrumental in writing that part of the bill that states "perishable agricultural seeds" was used. He did not know of any other perishable agricultural seed other than potatoes that were hauled.

REP. CLARK asked REP. DAVIS if he would have any objection to putting the words "potato seeds" in the bill. REP. DAVIS said no.

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REP. BERGSAGEL asked if load limits were placed on all large trucks. **Mr. Galt** said that the maintenance division determined if the road needed to be restricted. The policy is to restrict by the inch width of the tires. All vehicles are restricted by the inch width of tire they have on the ground. It affects all trucks.

REP. GALVIN wanted to know how a potato grower would get to Highway 93 with an 8000 lb. load if they don't live on that stretch of road. **Mr. Galt** said the driver would have to use a road that was not restricted or an access road. If they lived on an access road that was restricted, there would be a problem.

CHAIRMAN STANG asked if under the current system, are there any restrictive routes that can be used now and what are they? **Mr. Galt** said at this time of year the trucks that haul potatoes could be on Highway 200, the highway that cuts down to St. Regis on Highway 135, and cuts across Highway 93 through Charlo.

CHAIRMAN STANG asked if it was written into the bill that only non-restrictive roads be used, would it solve the Highway Department's problem with this bill. **Mr. Rigg** said the language proposed would help the Highway Department.

CHAIRMAN STANG asked **Mr. Lake** how he would feel if the committee amended this bill so the only road they could use other than county access roads to Highway 93, would be Highway 93 to Missoula and then on to Interstate 90, so they avoid these older roads. **Mr. Lake** said the trucks have been encouraged to use Highway 93, and if it became law they would have to. The problem the haulers have is that the potatoes have to come off of secondary roads all over the state. The haulers could never leave their farms if restrictions were placed on county roads.

CHAIRMAN STANG asked **REP. DAVIS** if he would agree to put loggers and logs into the bill, because they are also an agricultural product? **REP. DAVIS** said that the loggers are already restricted that time of year.

CHAIRMAN STANG asked **Mr. Lake** to described the seed potato as a perishable product saying that it has to be transported in the early spring, can he account for the fact that the GVW division wrote tickets from the first of January until the middle of June. Why are other trucks hauling seed potatoes to other areas? **Mr. Lake** said potatoes can be shipped for seed as late as June, but the restrictions would be off both in June and January. The market demands those potatoes be shipped from about the 15th of March through the first of May. Basically that is the market demands. If the potatoes are shipped in January, they would be perishable and would not last. Once the potatoes are taken from storage they rapidly deteriorate.

Closing by Sponsor:

REP. DAVIS said that the Highway Department's testimony has been a big surprise. Last session they were for this bill. The tickets received from the department did not include one seed potato hauler. Limiting the seed potato haulers to Highway 93 would certainly create problems to those who use Highway 91. He said the information they have, is that speed, not weight, has been the culprit breaking up the roads. The agriculture process is an asset to Montana. Those products must get out. If they are shipped too early they rot, if they go out too late nobody wants them. It is the only perishable product in Montana that is on a time limit.

HEARING ON HB 192Presentation and Opening Statement by Sponsor:

REP. WANZENRIED, House District 7, Flathead Valley, informed the committee that HB 192 has received a lot of study and a lot of attention. It proposes to establish state economic regulation of log hauling in Montana. Under the current system, logs are considered an agricultural commodity. The bill proposes to change that. Logs would no longer be an exempt agricultural commodity. They would come under regulation by the Public Service Commission (PSC). The PSC would establish rates to be charged to haul logs from point to point in Montana. The bill proposes, contrary to the history that has been taking place for the last 20 years, the state would regulate log hauling. It is not a perfect solution. The system would allow for collective or individual rate making. Individuals could approach the PSC individually or collectively to establish rates. This bill does not put the PSC into regulating commodities. Montana would not become the first state in which logs are regulated. Fourteen other states regulate intrastate shipments of logs including Washington and Oregon. The biggest problem is when logs are moved there is no assurance about the time table as to when payment will be made or the amount. EXHIBIT 4. On page 2, line 12 of the bill, is the definition of logs. Under current law, there are four classes of regulated haulers in Montana; Class A, B, C and D. This bill would establish a Class E carrier. Class E carriers could transport only logs and a hauler would have to have a Class E certificate. Class B carriers are regulated by the PSC. Of the commodities listed, some carriers haul for a published tariff. Their authority says they purchase a certificate and can haul the commodities as a common carrier. That is a tariff. Class C is much the same although in this case the commodity is on a contractual basis. It is moved under a contract. House Bill 192 proposes to meld these two concepts. This bill does not alter the relationship between the mills and the logging contractors. The only thing that changes is the rates. When a Class E certificate is issued, log haulers will be both common carriers and contract carriers. They would haul logs at the prescribed rate as a common carrier. The other option is

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available to the same log hauler. They can negotiate a contract and charge less than the tariff rate, but no less than 90%. Section 9 of the bill has a grandfather clause, in this instance anyone hauling logs between April 1, 1990 and October 1, 1991, will automatically be granted Class E certificates.

Proponents' Testimony:

REP. MARY LOU PETERSON, House District 1, Eureka, said she sponsored this bill last session. There were two things she was pleased about: 1) this bill is a much better bill than the bill in 1989. This bill has been carefully worked out and some of the problems she had last session have been taken care of in this bill. The unfairness issue that was addressed in 1989, is still there today. She attended public meetings that dealt with the players on the chart. EXHIBIT 4

Ben Havdahl, Montana Motor Carriers Association, stated his support for HB 192. EXHIBIT 5 and EXHIBIT 6.

REP. PAULA DARKO, House District 2, Libby, said that log truck drivers are an independent lot. For them to request regulation of any form is a big concession on their part that they need help. It is evident from the people testifying that there is no procedure in place. The rates are done informally and her constituents are writing about the changing rates. There is no clear regulation or definition as to how much these rates are. The committee needs to be aware that these people have come forth and asked for regulation.

Lyle Doty, Flathead County, stated his support for HB 192. EXHIBIT 7.

Dave Brandt, Brandt Trucking, Eureka, has logged for 20 years. He urged the committee to support HB 192. EXHIBIT 8.

Patricia Slack, Secretary, James A. Slack Logging and Trucking, said she is in support of HB 192. EXHIBIT 9

Harley Jones, Jones Hauling, log hauler, urged the committee to support HB 192. He has been an log owner and operator for 20 years in Missoula. EXHIBIT 10.

Arletta Mrgich, Eureka, Co-owner log truck, said she is in support of HB 192. EXHIBIT 11.

Suellen Brady, Log truck owner and operator, Whitefish, asked for the committee's support in the passage of HB 192. EXHIBIT 15

Opponents' Testimony:

Richard Coverdell, Columbia Falls, said they have a mom and pop operation with one log truck and do not have any problems with the mills for their pay. He is opposed to HB 192. EXHIBIT 12.

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Sherm Anderson, Owner of Sun Mountain Logging, Deer Lodge, said he is a logging contractor and is involved in all the logging procedures. He urged the committee to oppose HB 192. EXHIBIT 13.

Bart Cooper, Boulder, President of D. L. Cooper, Inc., said they are a family owned company and a logging contractor. Two years ago he opposed this bill to regulate log hauling. He gave an example of the livestock haulers. They are regulated under the PSC. At one time he was a livestock hauler and worked hard to see the livestock haulers regulated by the PSC, because he thought it would answer all their problems. He said they had the same kind of problems the loggers have today. He checked on the livestock haulers and found that the stock haulers feel that the PSC has a very poor enforcement. They do not have the manpower to give the proper enforcement. He cannot see any help in the near future for the log haulers from the PSC. Under HB 192, there will be additional time spent on record keeping, quarterly charges for gross revenue, and a quarterly charge for the tariff. Most truckers have a fair rate to go by. There aren't any problems now, lets not create any more.

Bill Chrismore, Logging business in Libby, said he has been in the logging business for 20 years. They operate different in Libby than the Missoula area. One of the fears is with the companies they haul logs for deals with smaller contractors. If log hauling becomes regulated the company will be turned over to one or two major log hauling contractors. They would have to negotiate with one or two contractors instead of 15 or 20. It's hard to understand why some of the contractors are not being paid, if that is true. He said in the last twenty years he has never had any problems with any of the mills not paying him. The problem they have in the logging business is the need for more flexibility in negotiating the rates. Someday there may need to be a change in the rates, e.g., the conditions of the roads change, the differences in the weights they haul because of forest service restrictions vary on many different things. Passage of this bill would not be in the best interest of many loggers in the Libby area.

Leroy Christofferson, Christofferson Log Liners, Inc., Missoula, spoke in opposition of HB 192. EXHIBIT 14.

Jim Blue, Log Trucker, Darby, said the flexibility that is available now with negotiating rates with the mills is in the best interest of all truckers. More bookkeeping and more record keeping will not make a trucker better off financially. If the change is from agricultural to regulated carrier, the agricultural rates on the GVW of 75% would be raised to 100%. Federal truck inspections, drug testing, log books, fuel reports, ton per mile tax, and now with the federal highway tax, they do not need any more forms to fill out.

Bill Cowder, Townsend, Log truck owner operator said if this bill

passes, a trucker will be limited to 2 contracts at a time. During the spring when many logs have to be hauled would make it too restrictive. This bill requires a 30 day minimum contract. If the job only lasts 3 or 4 days, a person would be stuck for 30 days until a new contract could be applied for. It has not been indicated how much this will cost the loggers.

Mark Pere, North of Belgrade, said they have survived in this business without regulations. With the difference in the haul distances and the road conditions in Montana, who would have enough knowledge or expertise to set the rate and where would the revenue for the administration come from.

Donna Normando, Normando Trucking, Thompson Falls, said the regulation will not solve their economic woes. The haulers should not expect to have their rates raised because of being regulated or not. There is a need for better rates for log hauling and the total industry. This bill does not address all of the needs nor will it solve all of the problems. The PSC will not get the haulers better rates. It will cost money to have audits on the yearly financial reports and load insurance. This is merely one more band aid that is not going to stop a bleeding wound.

Jackie Christofferson, self, said there are two words that are universal in any industry and that is; entrepreneurship and free enterprise. This bill could take those two things away from them. There are 3 things that make a business survive: 1) management; 2) money and managing the people; and 3) a simple solid foundation in service to the customer.

Everett Parsons, Log truck owner, Polson, spoke in opposition to HB 192.

Questions From Committee Members:

REP. FOSTER, asked Wayne Budt, PSC, if it is true that a tariff in place would apply across the board rather than for an individual company basis, or does each company have its own tariff. Mr. Budt said the option is there for each company.

REP. FOSTER asked if they offer the individual tariff, how is it determined and how is a company looked at to decide which tariff is best for that company. Mr. Budt said it will be based on the cost they present along with the tariff. For more than one company the cost would be shared, for one company it would be based strictly on the cost factor. REP. FOSTER said there has been discussion about auditing and the PSC looking into the operations of the companies, if it could be explained the amount of authority the PSC has, how deep into the books and records into a given company can the PSC dig into. Mr. Budt said they would treat them like they do the other carriers that have tariffs. He said the PSC would basically go in and review the bills and see that their rates are correct. They are set up now to do that every 2 to 2 ½ years. REP. FOSTER asked what would be

the effect on the PSC if HB 192 became law. Mr. Budt said there would be an fiscal impact. They would be looking at 1 more person to handle the freight bill audits, perhaps 1 more to handle increased insurance and the annual reports and contracts.

REP. FOSTER, asked REP. WANZENRIED to have all the people stand who were for HB 192 but were not testifying, and how many are here that are opposed to HB 192. He said there has not been a fiscal note requested for HB 192 and asked if he could furnish one to the committee. REP. WANZENRIED said that he would.

CHAIRMAN STANG asked what assurances do the people have from this bill that the industry will be better off 5 years from now. REP. WANZENRIED suggested going back to EXHIBIT 4 to study.

REP. LARSON asked Mr. Budt if he could explain some of the costs a trucker might incur i.e., will they be required to carry cargo insurance. Mr. Budt said the requirements for cargo insurance is in place now for the other classes of carriers. It is obviously something the commission would look at when they are writing rules. The liability insurance would be required. It is something that would be discussed with the carriers as to whether or not cargo insurance is needed. REP. LARSON asked if the PSC will require different maintenance standards and will these regulated carriers be subjected to some routine inspections of their trucks. Mr. Budt said the question would have to be directed to the Highway patrol, the PSC is not involved in truck safety.

REP. LARSON, asked REP. WANZENRIED that under this proposed regulation how would a hauler move from 1 to 2 to 3 jobs in one day? REP. WANZENRIED said the bill requires that a contract cannot be for more than 30 days, and that person cannot have more than 2 jobs in effect at one time. That does not preclude them from hauling the rest of the month. He referred to exhibit 4, and said that person would also be a common carrier, so for anyone else that person hauled for during the 30 days would be hauling as a common carrier.

REP. STEPPLER, asked Ben Havdahl about the figure he referred to for \$500,000 liability insurance and \$10,000 cargo insurance policy. What would be the cost for this. Mr. Havdahl didn't have the figures, but said he could provide them later.

REP. STEPPLER asked Mr. Coverdale in regards to the contract he had distributed to the committee members, that he couldn't find any specified price in the contract and no clause for fuel increases etc. Where is the protection and how does a contractor negotiate these things. Mr. Coverdale said it is a mutual agreement between the company and the hauler. REP. STEPPLER said he referred to a negotiated rate of no less than 90% from the PSC. Will that cause a problem with the larger truckers or companies and the common 1 or 2 truck operations. Mr. Coverdale said it might very well, because there are a number of small

carriers that prefer it not be there.

REP. KNOX asked Arletta Mrgich how would she feel about the ability of the contract carrier to operate for 10% less than the established rate and how would it affect her as a small logging contractor. Ms. Mrgich said at the present time they do not know what their logger has contracted for the hauling. She said they may be operating 10% to 20% under already. With this bill, if a person is efficient enough to offer a contract for 10% less than her because they have more trucks and receive better buys on fuel, or that he can operate for less is fine. At least I know what I am getting and where I stand.

REP. MCCULLOCH asked Mr. Budt in regards to Mr. Havdahl's testimony where he talked about adequate or reasonable haul rates and the economic and market factor, could he then assume as the economic and the market factors change, the tariff itself would change. Mr. Budt said his impression on the market and the economic impact was that obviously when a carrier proposes an initial rate to the commission, he will look at what his costs are and what would be a reasonable profit. He would have to weigh against the market impact of what the rate would do to the competition of the mills or the loggers bringing their own trucks in to do it. Once the rates are established they don't change until the carriers propose a change.

REP. MCCULLOCH asked REP. WANZENRIED about the discussion of the possibility existing if this bill passed about the turnover for 1 or 2 large contractors take over. REP. WANZENRIED said it is more likely to occur under the present circumstances where there is no basic rate structure anywhere.

REP. CLARK asked if the log haulers are restricted to two contracts, would they then be allowed to haul as a common carrier. REP. WANZENRIED said yes, a person can only have 2 contracts in effect up to thirty days. After that, any other business that is done during the duration of those contracts would be done as a common carrier. He said that a number of the people like to use contracts. The volume of the 2 contracts for thirty days would put the haulers at a competitive disadvantage. The opportunity to haul logs as a common carrier would mean that everyone would know what the rates would be for the duration while the 2 contracts are in effect.

REP. ELLIS asked Mr. Havdahl about this bill being compared to the livestock hauling industry, would he know if there has been a large turnover in those haulers in the last few years. Mr. Havdahl said probably not. Right now there are 135 members in the tariff and it has been consistent. There have been changes, but basically stable.

REP. LARSON asked Mr. Chrismore what position does the Montana Logging Association have on this matter. Mr. Chrismore said that the Executive Board met and decided at this time they would not

take a position for or against HB 192.

REP. LARSON asked Mr. Budt how would the loggers adjust the rates if they have 3 miles of native road, 10 miles of gravel road and 30 miles of highway and switch jobs in the middle of the day, who would be controlling and setting that rate. Mr. Budt said the classifications are set up before the job starts. Everyone knows what they are. If they switch jobs, the road classifications are set up for each job.

REP. FOSTER asked REP. WANZENRIED about the testimony of Mr. Coverdale. The statement was made about needing a state mandated contract between log shippers and log haulers stated terms and conditions agreed upon by both parties. If that were done, how would that help or hinder the proponents of this bill? REP. WANZENRIED, That is how Oregon regulates their haulers and shippers. Some of the language in the bill was taken from the Oregon law. Most everyone who wants a floor established realize that the rates would be higher. For the first time in recent years, log haulers would be receiving a compensatory rate.

CHAIRMAN STANG asked Mr. Budt if he would briefly explain what would happen if someone wanted a contract for less than 90%. Mr. Budt said if someone wants to operate a contract, they can right now operate it between 100% and 110%. If they want to operate low, they can go to the commission and review the situation. The tariff rate will be set based on 100 weight or per mile and type of roads. It would apply to all areas of the state.

REP. GALVIN, define rate. Mr. Brandt, each person has their own rate, based on mileage, roads etc. All of the above figures out to a rate per ton.

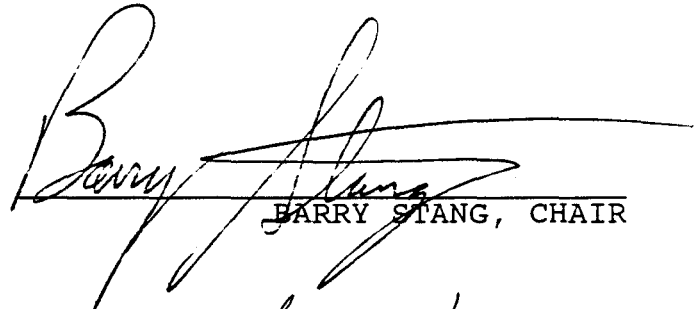
Closing by Sponsor:

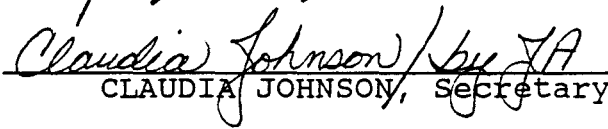
REP. WANZENRIED said as far as he knew, there was infrequent and very limited contact between the Wood Product's Association and the Montana Motor Carrier's Association representing the log carriers during that period of time. Some sort of regulation is needed. One thing to keep in mind, the bill does not regulate anything except the transportation costs. It has nothing to do with safety. The bill has a mechanism built in to reflect the rates. The cost of implementation is another concern here. The bill proposes rate making be brought out in the public for the first time. All parties will have an opportunity to reflect what those rates might be.

CHAIRMAN STANG informed the committee that it would probably be a week to ten days before this bill would be acted upon. He said it will be discussed it at the next committee meeting to decide whether it should go into a subcommittee.

ADJOURNMENT

Adjournment: 6:15 p.m.


BARRY STANG, CHAIR


CLAUDIA JOHNSON, Secretary

BS/cj

HOUSE OF REPRESENTATIVES

HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL

DATE

2-7-91

NAME	PRESENT	ABSENT	EXCUSED
REP. FLOYD "BOB" GERVAIS, V.-CHAIR	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ALVIN ELLIS, JR.			
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. PATRICK GALVIN	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. JIM MADISON	✓		
REP. LINDA NELSON	✓		
REP. DON STEPPLER	✓		
REP. HOWARD TOOLE	✓		
REP. ROLPH TUNBY	✓		
REP. BARRY "SPOOK" STANG, CHAIRMAN	✓		

EXHIBIT 1
DATE 2-7-91
HB 37

TESTIMONY ON
HB 37

Mr. Chairman, members of the committee, my name is Ervin Davis, Representative from HD 53, Lake County.

HB 37 is basically the same bill which was passed in 1987 and again in 1989. The only difference this session is HB 37 asks that the provision for exemption from restriction of vehicles carrying perishable agricultural seed potatoes be on a permanent basis to allow the Montana certified seed potato growers some stability.

I've been in contact with the State Highway supervisor in Lake County as to any known road damage being attributed to seed potato haulers. As the roads begin to show damage in the spring of the year - chuck holes, frost heaves and the like - reports indicate the damage had begun to show up BEFORE the seed potato growers begin to ship.

No seed potato grower in Montana wants to place his business in jeopardy. As the law requires, any hauler in violation must return to the point of loading and, in most cases, is asked by the grower not to return.

For the past three seasons, now coming four, I've been the watchdog during that 4 to 6 weeks period of concentrated hauling. This past season, 1990, I asked the GVW division to set up portable scales on HWY 212 to run a spot check, including seed potato haulers. NOT A SINGLE CITATION was issued on that highway to a seed potato hauler. Those citations are available in the State Highway division. Nor were any citations issued to a seed potato hauler on any of the adjacent highways -- 35, 28, 93, 200, 135 nor the Round Butte Highway, running west from the city of Ronan.

I'd like to turn this over to any proponents and would reserve the right to close. Thank you.

EXHIBIT 2
DATE 2-7-91
HB 37

February 7, 1991

I am Don Lake, a farmer from Lake County and have lived in Ronan for fifty-five years. I have grown seed potatoes for thirty-five years. During the past ten years I have served as an adviser on the Montana Potato Improvement Association (MPIA) to Montana State University representing Lake County which has about twenty-seven seed potato growers who plant about 2,200 to 2,500 acres of certified seed which is normally marketed from March 15th through May 1 of each year.

We have operated under the present statute which allows trucks to load to their legal license weight for the past three seasons to determine if any damage was occurring to Montana roads. I do not know of any incidence where someone felt that these seed potato trucks are causing abnormal wear and tear.

During the past three years the shipments have gone very smoothly because trucks are able to haul from all areas of the state as the buyers wish. There has been an increase in shipments of Montana seed potatoes which has been a great economic boost to the state.

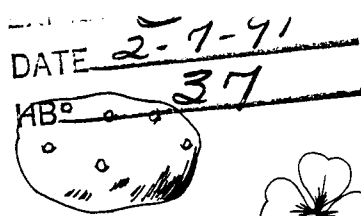
We growers wholly support the passage of this bill because it makes good economic sense. It creates more jobs, better profit for the growers, economic use of fuel for shipping and increased overall efficiency of the industry.



SCHUTTER SEED FARM

FOUNDATION AND CERTIFIED SEED POTATOES

ROUTE 2, BOX 30 • MANHATTAN, MONTANA 59741 • RESIDENCE 406/284-3718 • WAREHOUSE 406/284-3346



Members of the highway committee,

My name is Sid Schutter. I farm with my brothers in the Manhattan area.

There are approximately 7,000 acres of seed potatoes grown in the state of Montana each year. Over 90 percent of these potatoes are sold and shipped out of state, mostly to Washington. This generates approximately 17 to 20 million dollars of revenue each year. This is revenue coming into Montana from other states. These monies are spent by Montana seed potato growers in this state for labor, farm equipment, and fertilizer from local dealers.

Montana seed growers have a lot of competition from the seed growers of Canada, Idaho and Oregon. All of these areas are closer to the Washington market than Montana. Therefore, they have a lower freight cost. If the seed trucks coming out of Montana cannot travel with their full legal interstate weight because of local weight restrictions, then this raises our freight cost more yet. If this happens the Washington buyers will look to our competitors, who are closer to the market, for their seed potatoes. This will hurt the Montana seed potato business and state revenue.

For these reasons, I am asking you to support the passage of H. B. 37.

Respectfully yours

Sid Schutter
Sid Schutter

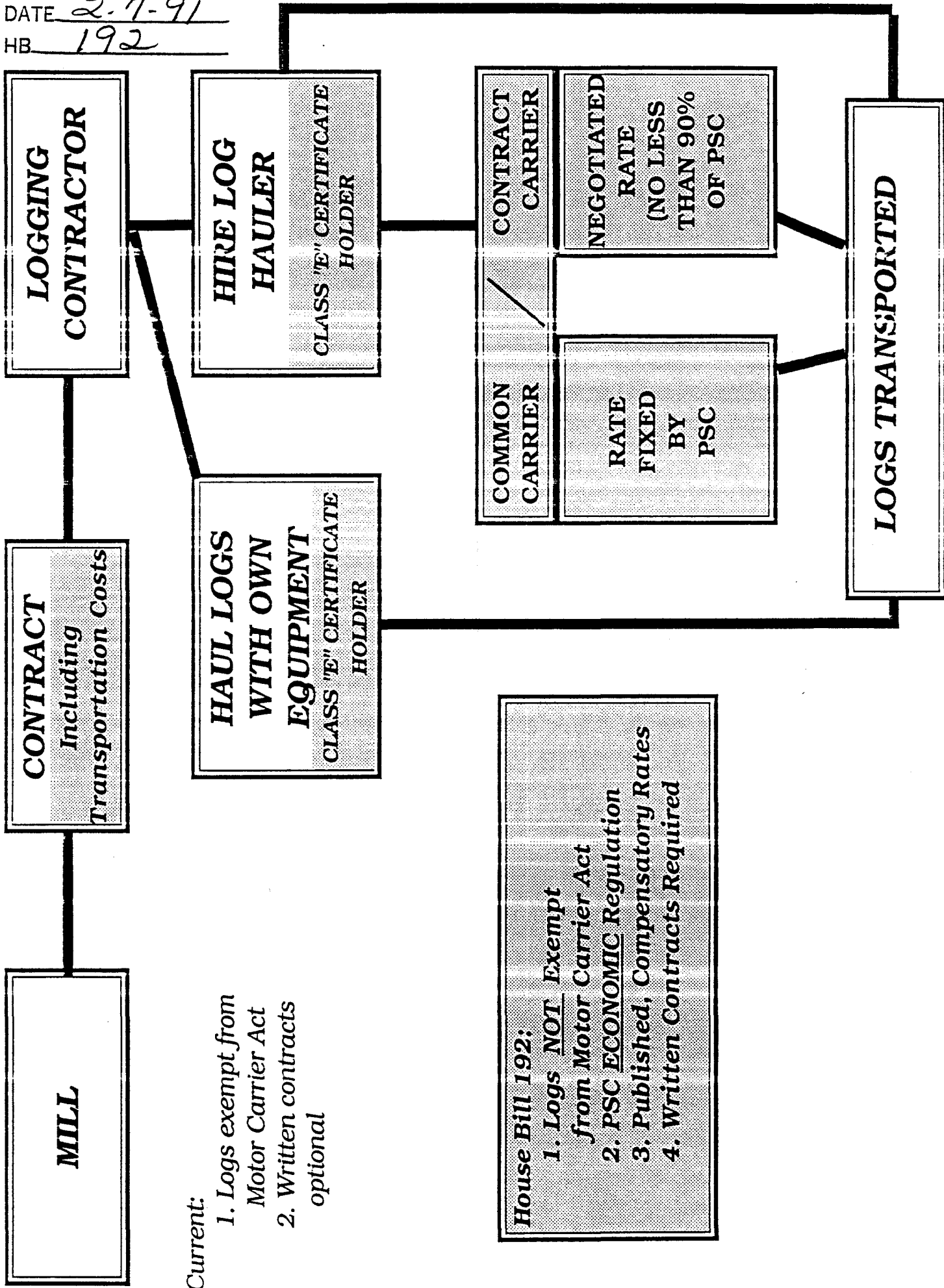


EXHIBIT 5
DATE 2-7-91
HB 192

Date Submitted: 2/7/91
HB 192
Ben Havdahl, MMCA

Mr. Chairman.....Members of the Committee. For the record, my name is Ben Havdahl, Executive Vice President of Montana Motor Carriers Association.

MMCA supports the passage of HB 192, a bill to include the "for-hire" transportation of logs within Montana as a regulated commodity under the Motor Carrier Act. The bill will simply add logs to the more than hundreds of commodities that are all ready regulated under the act in Montana. A partial listing of the commodities is attached for the information of the committee.

MMCA and the Montana Log Truckers Association merged organizations in June 1990 and currently there are 188 members in the MMCA Log Truckers Conference and they are seeking this legislation. MMCA Board adopted a position for full support of this effort. MMCA members have been operating under the act for several years and have had considerable experience with economic regulation in Montana.

Economic regulation of the trucking industry by Montana has been an integral part of this State's transportation policy for the past 60 years. Controls on motor carrier entry and rates, coupled with limited antitrust immunity for collective rate-making, have provided fairness to the shipping public. Further it has resulted in a safe and reliable trucking service and a complete transportation network available even to the most remote shipper. Under regulatory controls, the trucking industry in Montana has grown to become a major mode of Montana freight transport.

The role of state government, through the Public Service Commission, dating from the earliest days of freight transportation, has been to regulate freight common carriage to ensure that adequate service is available for all those who need it, at reasonable rates and on a nondiscriminatory basis. Montana like some 35 other states, adopted laws in the early 1930s regulating entry, rates charged and the financial arrangements of carriers.

Why regulate trucking in Montana?

Economic regulation stabilizes the trucking industry and enhances productivity.

It assures fairness to all shippers and inhibits anti-competitive rates and practices.

It maintains the flow of information essential for competition. This is due to the requirement for public filing and broad dissemination of tariffs and terms applicable to common carrier service.

Page 2

Economic regulation encourages efficient collective rate making. Calculating the appropriate rate for each shipment is a big task, involving many possible pairs of origin and destination points, types of shippers and types of commodities. Collective rate making has enabled carriers to efficiently meet this task under antitrust immunity. Carriers can also file individual rates. Shippers have input relating to rate proposals through public hearings and comment.

It enhances highway safety. There is a direct relationship between economic regulation and safe equipment. According to the AAA Foundation for Traffic Safety, "the problems involved in sharing roads and highways with a limited number of highly regulated, responsible motor carriers operating in a basically secure economic environment are totally different from the safety problems involved with a large number of non-regulated, economically insecure motor carriers ."

Experience with limited deregulation has shown that when carriers are forced to engage in a fierce struggle for traffic, they cut costs in those areas most related to safety.

Finally it preserves well-established shipper liability protections. Carriers are required to maintain a minimum amount of liability insurance set by regulation at \$500,000 and have in force a \$10,000 cargo insurance policy.

Why regulate logs in Montana? You have heard and will hear more about why. I would like to give you just a few reasons to pass HB 192.

Under current motor carrier law, logs are considered to be a non processed agriculture commodity and are exempted from the act. Livestock hauling, also a non processed agriculture commodity, is regulated.

Current log hauling arrangements are verbal and on a take-or-leave-it basis.

House Bill 192 establishes a special class of carriers, Class E, to transport logs in the State as a common carrier, with the ability to also enter into written contracts with shippers.

The rates paid to log truckers, many times are, unfair, inconsistent, arbitrary and sub-standard for their transportation service.

House Bill 192 would place logs under the intrastate motor carrier act as a regulated commodity, allowing compensatory rates for common carriage to be established, either as an individual carrier or as a group with immunity from anti trust laws.

House Bill 192 would require that contracts be in writing for transportation of logs by truck. Although current logging industry practices include written contracts between mills and log contractors which include costs for cutting and transporting logs plus a profit, generally no such written contract is in effect between the log contractor, the shipper of the logs and the log trucker.

Page 3

Log regulation in other States?

14 states regulate log hauling by motor carriers from the forest to the mill and/or from storage to the mill. Included are: Connecticut; Kansas; Massachusetts; Michigan; Minnesota; Nevada; New Mexico; Ohio; Oregon; Pennsylvania; Texas; Utah; Washington; and West Virginia.

16 states regulate wood chip hauling by motor carriers from the forest or mill to paper plants and include all of the above states except Michigan, Minnesota, and New Mexico. In addition, Montana, Idaho, New York, and North Carolina regulate wood chips. Montana regulates woodchips, why not logs?

How is an intrastate tariff established?

There are those carriers, when considering to haul regulated products, that fear they will fall into a regulatory abyss from which there is no escape. Such is not the case. Certain rules must be followed and reports rendered, but the requirements are no more than those required by any carrier's accountant for good business management and preparation of tax returns.

The initial consideration is the "construction" of a proposed tariff to be filed with PSC. A tariff is nothing more than a price list or a rate list for services to be rendered. Rates can be as simple as reading a menu. Rates are the costs to the shipper for hauling the product. Rates can be based on miles, weight, point-to-point, or any other method the carrier or group of carriers may deem appropriate. In the case of log hauling different road surfaces are taken into account.

Rates are determined in such a way, that any shipper can look at a tariff and determine the exact amount he will be charged for the services performed, prior to the movement of the product.

The determination of what makes an adequate or reasonable line haul rate is composed of basically two major factors, the economic factor and the market factor. Considering the economic factor, carriers must decide at what level they need to operate, to pay their bills and realize a reasonable profit.

The second factor in constructing a rate is the marketplace or the shipper. It must be attractive to the shipper or a shipper will take other alternatives such as using his own trucks.

In the case of log truckers establishing an initial rate, they no doubt would look to existing rates as a base and construct a tariff from that point.

Carrier's economic data is assembled to determine costs and rates, including: revenue and operating expenses. Collectively or individually this data is assessed and included in the base used to determine a fair and reasonable rate.

MMCA now provides tariff service to some 135 livestock carriers who are members of a collective livestock tariff. I have provided for the committee's information a copy of that tariff's rules, two pages of rate sheets, and a Memorandum explaining the details of how a tariff is generally established.

Livestock carriers sought and were granted economic regulation by the 1971 Legislature. Their system has been working to the satisfaction of carriers and shippers for 20 years. The structure of a collective tariff for log haulers will be similar but with particular modifications appropriate to that industry.

Rate determination is not a mysterious process. It is a process that is open and fair to all concerned both carriers and shippers. The process insures a transportation system that is stable and dependable. It is not perfect. Livestock haulers can attest to that fact as can others. However livestock haulers and other carriers are still operating effectively under the regulated system after many, many years.

Thank you.

EXHIBIT 5
DATE 2.7.91
HB 192

PARTIAL LISTING OF COMMODITIES TRANSPORTED BY MOTOR CARRIAGE
WITHIN MONTANA UNDER INTRASTATE COMMERCE REGULATION

Forest Products -Bark-Sawdust-Wood Chips -Mill to Paper Plant-Forest to Paper Plant
Lumber and Wood Products-Finished lumber-Plywood-Partical board
Fencing Roofing Shingles-Poles and Posts
Building materials - Blocks, Bricks-Dry wall-Roofing metal,composition
Buildings
Fresh fish & othe marine products
Metalic ores
Coal- Crude Petroieum,Natural Gas
Nonmetalic minerals
Ordnance & accessories
Food & kindred products
Tobbaco products
Textile mill products
Apparel & other finished textile&knit
Furniture & fixtures
Pulp, paper & allied products
Chemicals & allied products
Petroleum & Coal products
Asphalt-Coke
Rubber & misc. plastic products
Leather & leather products
Stone, clay, glass & concrete products
Primary metal products
Fabricated metal products
Machinery -Electrical machinery equipment
Transportation equipment
Instruments,photo&optical
Waste and scrap metal
Dry bulk cement
Bulk fertilizer
Livestock-Cattle-Sheep-Horses
Processed cattle feed
Hides
Automobiles -light vehicles- Automotive parts-batteries
Farm machinery
Floor covering
Household goods
Solid waste - ashes
Beverages-Liquors
Meal
Meat
Dairy products
Paints
Pipe
Food products-canned-frozenAnd many others



EXHIBIT 6
DATE 2-7-91
HB 192

B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

February 7, 1991

MEMORANDUM TO: MONTANA HOUSE OF REPRESENTATIVES,
COMMITTEE ON HIGHWAYS AND TRANSPORTATION

REGARDING: How Carriers, Individually or Collectively, Establish a Tariff
for Transporting Commodities Within Montana.

The Legislature established the Montana Public Service Commission as the State agency responsible for regulating transportation in the Montana and PSC is the appropriate agency for approving tariffs.

The initial consideration in rate establishment is the "construction" of a proposed tariff to be filed with PSC. A tariff is nothing more than a price list or a rate list for services to be rendered and can be as simple as reading a menu. Rates are the costs to the shipper for hauling the product. Rates can be based on miles, weight, point-to-point, or any other appropriate method.

Rates are determined in such a way, that any shipper can look at a tariff and determine the exact amount he will be charged for the services performed, prior to the movement of the product.

The determination of what makes an adequate or reasonable line haul rate is composed of basically two major factors, the economic factor and the market factor. Considering the economic factor, carriers must decide at what level they need to operate, to pay their bills and realize a reasonable profit.

The second factor in constructing a rate is the marketplace or the shipper. A rate must be attractive to the shipper or he will take other alternatives such as using his own trucks.

Carrier's economic data is assembled to determine costs and rates, including: revenue; and expenses such as labor, fringe benefits, operating supplies, fuel and parts, fuel taxes, property taxes, GVW fees, workers compensation premiums, insurance, depreciation, purchased transportation, rent and others. Collectively or individually this data is assessed and included in the base used to determine a fair and reasonable rate. A profit factor is also included.

Under the PSC system for rate establishment, once an initial tariff is filed and approved by the PSC, the rates and charges are effective. Routinely a hearing is not held on the initial establishment of rates. The PSC may, however, investigate and conduct a hearing on initial rate filings. Any changes in rate levels or charges in the tariff may be challenged at public hearings.

Collective tariffs operate under approved rules and regulations and the PSC has to approve these rules and other information connected with an initially filed tariff and any changes to those rules after the tariff becomes effective.



MONT. P.S.C. NO. 5
CANCELS
MONT. P.S.C. NO. 4

ORIGINAL TITLE PAGE

MONTANA LIVESTOCK TARIFF BUREAU,
AGENT

LIVESTOCK TARIFF NO. 3
(CANCELS LIVESTOCK TARIFF No. 1-B)
SEE LIVESTOCK TARIFF NO. 2 FOR PARTICIPATING CARRIERS

NAMING

INTRASTATE
MILEAGE COMMODITY RATES
AND MILEAGE VOLUME TENDER RATES

- AND -

RULES AND REGULATIONS

BETWEEN POINTS IN	AND POINTS IN
MONTANA	MONTANA

THIS TARIFF APPLIES ONLY ON MONTANA INTRASTATE TRAFFIC

ISSUED:

EFFECTIVE:

ISSUED BY:
B. G. HAVDAHL - GENERAL MANAGER
501 NORTH SANDERS AVE.
HELENA, MT 59601

TESTIMONY OF LYLE DOTY
BEFORE THE HIGHWAYS AND TRANSPORTATION COMMITTEE
THURSDAY, FEBRUARY 7, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS LYLE DOTY. I AM A RESIDENT OF FLATHEAD COUNTY AND I LIVE IN KALISPELL, MONTANA.

I AM IN THE LOG TRUCKING BUSINESS AND I HAVE BEEN FOR TWENTY-FIVE YEARS. I HAVE FOUR LOG TRUCKS, AND I EMPLOY 3 DRIVERS AND I OPERATE ONE TRUCK MYSELF. I AM HERE TO ASK FOR YOUR SUPPORT OF HOUSE BILL 192, ON ECONOMIC LOG TRUCK REGULATION.

THE LOG TRUCKING INDUSTRY IS IN A SERIOUS STATE OF DETERIORATION, BECAUSE OF THE LACK OF REVENUE. MANY OF THE LOG TRUCK OWNERS ARE OPERATING OLD AND OUTDATED EQUIPMENT. THE MAINTENANCE OF THEIR EQUIPMENT IS VERY MINIMAL AND IN SOME CASES NOT AT ALL. THE LOG TRUCK INDUSTRY IN VIEW OF THE NEW FEDERAL DEPARTMENT OF TRANSPORTATION RULES AND REGULATIONS, FACES A SAFETY CRISIS.

OVER THE PAST 10 YEARS THE INDUSTRIES REPLACEMENT COSTS HAVE DOUBLED. OUR MAINTENANCE COST OF TIRES, FUEL INCREASES, REPAIRS, LABOR COSTS, INSURANCE RATES, AND TAXES, HAVE ALSO INCREASED TO THE POINT THAT THE LOG TRUCK INDUSTRY CAN NOT AFFORD TO MAINTAIN THEIR EQUIPMENT PROPERLY. THEREFORE, WITH NO MAINTENANCE COST INCREASES, THIS IS CREATING MANY SAFETY PROBLEMS.

IT HAS BECOME ALMOST IMPOSSIBLE FOR THE LOG TRUCKER TO STAY IN BUSINESS. THERE HAVE BEEN NO INCREASES IN CARRIER RATES FROM EITHER THE SHIPPER OR MANUFACTURER IN THE PAST 10 YEARS, WITH THE EXCEPTION OF 2 SMALL MANUFACTURERS.

MUCH OF THE INTRASTATE TRUCKING ACTIVITY IS CURRENTLY REGULATED IN MONTANA AND HAVE BEEN FOR MORE THAN 50 YEARS. MOST STATES REGULATE TRUCKING OF INTRASTATE FREIGHT. ~~14~~ STATES PRESENTLY REGULATE LOGS IN SOME FORM OR WAY FROM THE FOREST TO THE MANUFACTURER (MILLS).

LOG TRUCK OWNERS CAME TO THE DECISION TO ASK FOR ECONOMIC REGULATION AFTER A GREAT DEAL OF THOUGHT AND CAREFUL CONSIDERATION. ECONOMIC REGULATION WILL CHANGE THE LOG TRUCK INDUSTRY. REGULATION WILL NOT HARM ANY OTHER ASPECT OF THE TIMBER INDUSTRY, WHETHER IT IS THE SHIPPER OR THE MANUFACTURER. CARRIER RATES WILL BECOME AN OPEN PROCESS BASED ON ACTUAL COSTS. THE CURRENT SYSTEM IN SETTING CARRIER RATES IS OUTDATED AND IS NOT CURRENTLY WORKING.

EXHIBIT

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DATE

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192

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, I AM ASKING FOR YOUR STRONG SUPPORT IN* HOUSE BILL 192 FOR ECONOMIC LOG TRUCK REGULATION. LOG TRUCK OWNERS ARE SMALL BUSINESSMEN, BUT BECAUSE OF THE CONCENTRATED POWER IN MONTANA'S TIMBER INDUSTRY, THEY HAVE LOST CONTROL OF THEIR BUSINESSES AND ANY CHANCE OF A FREE ENTERPRISE ENVIRONMENT.

IN ASKING FOR YOUR SUPPORT OF HOUSE BILL 192 ON ECONOMIC LOG TRUCK REGULATION, WE ARE GIVING BACK TO THE LOG TRUCK OWNER CONTROL OF HIS OWN DESTINY AND WELFARE. IT WILL ALSO GIVE THE LOG TRUCK INDUSTRY A CHANCE TO MAKE ITS OWN DECISION AND TO GOVERN ITSELF.

I THANK YOU FOR YOUR TIME AND ONCE AGAIN I ASK FOR YOUR SUPPORT ON PASSING HOUSE BILL 192.

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DATE 2-7-91
HB 192

Dave Brandt Trucking
Box 412
Eureka, Mt. 59917

HELLO COMMITTEE MEMBERS:

MY NAME IS DAVE BRANDT AND I RESIDE IN EUREKA, MT., AS I HAVE FOR 20 YEARS. I HAVE OWNED AND OPERATED LOGGING TRUCKS FOR 17 YEARS. MAYBE SOME OF YOU REMEMBER ME FROM TWO YEARS AGO. I CAME TO HELENA AND SPOKE AND LISTENED TO WHAT OTHER PEOPLE HAD TO SAY. ONE FELLOW IN PARTICULAR THAT STUCK IN MY MEMORY WAS A GENTLEMAN BY THE NAME OF DON ALLEN, WHO AT THAT TIME WAS EXECUTIVE DIRECTOR OF THE MONTANA WOOD PRODUCTS INDUSTRY AND PROBABLY STILL IS. I THINK HIS CLOSING STATEMENT WAS, "YOU FELLAS REALLY DON'T WANT THIS REGULATION AND WE WILL DEFINITELY TRY TO WORK WITH THE INDUSTRY TO CORRECT SOME OF THE PROBLEMS." THIS PROBABLY HAS HELPED ME MORE FULLY UNDERSTAND HOW PRESIDENT BUSH FEELS AFTER 6 MONTHS OF TRYING TO TALK TO SADDAM HUSSEIN.

I HAVE HAULED INTO APPROXIMATELY 15 DIFFERENT SAWMILLS IN NORTHWEST MONTANA DURING MY CAREER. THIS SEASON I HAVE HAULED INTO PROBABLY 6 OF THESE MILLS FOR AT LEAST A MONTH OR MORE EACH. THIS GIVES ME WHAT I BELIEVE TO BE A BROAD EXPOSURE TO DIFFERENT MILLS AND HOW THEY WANT TO PAY MY SERVICES.

IN MY OPINION ONE OF THESE SAWMILLS IS VERY FAIR TO THE LOG HAULER, AND ONE IS VERY UNFAIR IN THE WAY THEY PAY FOR HAULING LOGS. THE OTHER FOUR IN BETWEEN THESE EXTREMES CAN BE FAIR TO THE TRUCKER, BUT ARE NOT CONSISTENT AT IT. THE QUESTION THAT I ALWAYS FIND MYSELF TRYING TO DEAL WITH IS, WHY IS THIS SMALLER FAMILY-OWNED SAWMILL ABLE TO BE FAIR WHEN THE LARGE CONGLOMERATE CORPORATION MILLS ARE TRYING TO LEAD THE WAY IN WAGE REDUCTIONS IN ALL PHASES OF THE TIMBER INDUSTRY? THEY HAVE DONE A GOOD JOB OF PITTING THE LOGGER AGAINST THE TRUCKER, LOGGERS AGAINST LOGGERS, BIDDING FOR THE JOB TO MAYBE PAY THE HAUL RATE OR MAYBE PAY WHATEVER THEY CAN GET AWAY WITH. I BELIEVE THAT HB 192 WOULD MAKE THE TIMBER INDUSTRY MORE FAIR FOR ALL PARTIES CONCERNED.

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DATE 2.7.91
HB 192

Dave Brandt Trucking
Box 42
Eureka, Mt. 59917

YOU COMMITTEE MEMBERS SITTING THERE AND LISTENING TO ME PROBABLY THINK I SOUND LIKE A BROKEN RECORD. WHAT'S THIS GUY TALKING ABOUT? IF HE SAYS LOG TRUCKING IS SO BAD, WHY THE HELL DOESN'T HE GO FIND ANOTHER JOB TO DO ? WELL, MY ANSWER TO THAT QUESTION IS, WHY SHOULD I HAVE TO? LOG TRUCKING IS MY PROFESSION; I LOVE IT. I FEEL I AM PROVIDING A NECESSARY SERVICE TO THEM AT THE MOST REASONABLE RATE I CAN PROVIDE IT AND STILL SQUEEZE OUT A LIVING. THAT IS WHERE SOME OF THESE MILLS KEEP TAKING ADVANTAGE OF A GOOD SITUATION. THEY'VE SQUEEZED US ALL AND TRIED (MOST CASES SUCCEEDING) TO KEEP US WORKING AS CHEAPLY AS POSSIBLE. IN SPITE OF IT ALL I HAVE WORKED HARD TO ACQUIRE THE NEEDED EQUIPMENT AND FACILITIES TO DO A GOOD JOB OF LOG TRUCKING. I WISH I COULD JUST COME OUT AND SAY EVERY JOB I HAUL LOGS ON I MAKE A GOOD INCOME, BUT THAT WOULDN'T BE QUITE ACCURATE. AND I KNOW YOU HAVE TO TAKE THE BAD WITH THE GOOD. AND I REALIZE HB 192 FOR SOME JOBS MAY NOT PROVIDE ANY MORE MONEY THAN THEY MAKE NOW. BUT I THINK IT WOULD EVEN UP THE LOG TRUCK INDUSTRY TO WHERE WE WOULD ALL MAKE A COMPARABLE LIVING.

*At whatever
Mill or part of Montana we are working in-*

Mr. Chairman and Members of the Committee

For the record,

My name is Patricia A. Slack, Corporate Secretary for James A. Slack Logging & Trucking. I am here to speak in favor of House Bill 192, because log trucking is a viable part of the timber industry, and these LOG TRUCKERS are entitled to earn a fair living.

My husband, James A. Slack, and I bought our first log truck in 1959. We have been operating logging trucks for 32 years in the Flathead valley. We have had as many as twelve trucks at one time and are presently operating five logging trucks. In 1979 we sold some of our trucks because we found that log trucking was not very profitable. I have always done all the bookwork for our business. In 1986 we included in our business the logging (or shipping) part of the business in order to keep our trucks busy and to insure that the trucks receive a fair price for hauling logs.

In my testimony I will refer to the mills as the manufacturer, the loggers as the shipper, and the log trucker as the carrier.

First some definitions:

What is a LOG TRUCK? A log truck is a conveyance that is used to transport processed logs from the woods or shipping point to the mill or manufacturer.

What is a LOG TRUCKER? A log trucker is a person who drives a log truck. He may either be employed by someone who owns the

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logging truck or, as in most cases, he may own his own log truck. After this he shall be called the carrier.

What are the MILLS? The mills, or manufacturer, are where logs are taken to be processed into lumber, plywood, chips, hog fuel, etc. These processed products are then shipped by carrier to the consumer. The carriers of these processed products are all regulated.

What is a LOGGER? A logger is a contractor who contracts with the manufacturer to process the trees into logs to be hauled into the mill by a log trucker. His contract is usually for a fixed price for cutting the trees, delimbing and sorting them, and transporting this now processed log to the mill, therefore he is responsible to hire and pay the log trucker. He is allowed by the State and Federal government to either put the log trucker on the payroll and be responsible for all taxes, unemployment insurance, and worker's compensation insurance (which must be paid on 25% of the trucks gross), or he can subcontract, with a written contract, to a carrier to get the logs to the mill. The carrier then must carry his own Worker's Compensation insurance and pay all his own taxes. According to our instructions from the State Worker's Compensation office and the Internal Revenue Service, who have audited us, we must have a written contract with a carrier other than our own trucks, to ship our logs to the mill. This contract must state a negotiated price for getting the logs to various mills, a time for payment, and a termination agreement. According to the State we must also have a copy of the carriers Worker's Compensation policy on

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a copy of his exempt (Independent Contractors) certification for Worker's Compensation. Our insurance carrier also requires a copy of the carriers liability insurance coverage in the limits that they state. Very few shippers have a written contract with the carrier, in fact, most carriers do not even know what they are getting paid for transporting these logs to the mill, or when they will get paid, until they receive their first check from the shipper.

What is an INDEPENDENT CONTRACTOR?

I have enclosed a copy of the legal definition of an INDEPENDENT CONTRACTOR according to the legal counsel of the State Fund as I am sure that you do not want me to read three pages of this.

From the late 1950's and into the 1960's one to five truck carriers were carried on the payroll by the shipper, who paid all the taxes including Worker's Compensation and unemployment insurance. As bigger manufacturers absorbed smaller manufacturers they began to call the carriers INDEPENDENT CONTRACTORS which in turn made them responsible for their own Worker's Compensation and Social Security insurance. The carriers were also without unemployment insurance. Some of the smaller manufacturers and shippers still keep the carrier on the payroll. We were now called INDEPENDENT CONTRACTORS, but most of us have no written contracts with the manufacturer or the shipper.

The shipper tells the carrier; what time to be on the job, how much weight to carry on our trucks, what route to take, and

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where to take the load of logs. This sounds like the definition of an employee. Maybe the shippers should have all the log truckers or carriers on their payrolls and pay their taxes and insurance. With regulation carriers would be INDEPENDENT CONTRACTORS.

Without a contract, the carrier does not know what the rate is, and when they will get paid, if ever. Some shippers do not pay for 30 to 120 days after the logs are delivered, sometimes using the excuse that "they have not yet been paid by the manufacturer". Many shippers do not pass along the full rate allowed for transportation in their contracts with the manufacturer, using this deduction for bookkeeping fees which perhaps should have been compensated for in the shippers overall contract. Also, some manufacturers, not located near state weigh stations, allow overweight loads to make up for the lower prices for hauling.

Also with the severe fuel increases we have incurred this year, some of the manufacturers have allowed fuel cost allowance increases in the haul rates to be adjusted according to fuel prices. Many carriers are not receiving these increases from the shippers.

Without a contract, if a carrier goes to the manufacturer with a complaint, he is told to talk to the shipper (or logger) and he often can't negotiate with the shipper because he does not have a contract.

If the carrier is not paid a fair rate he is not able to

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operating condition. Many truckers are forced to neglect safety maintenance simply because there is not enough money to go around. Sometimes there is just not enough money for new tires or brakes when they are needed. Without compensatory rates, often the trucker's concern is to operate his truck in an unsafe condition until next payday when he will have enough revenue to correct the unsafe condition. That is, if they get paid on time.

We feel that House Bill 192 should be passed because the tariff will have a fair and just rate.

Thank you.

39-71-120. Independent contractor defined.

(1) An "independent contractor" is one who

renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1).

As stated in the definition of employee, to establish an employment relationship of any kind, requires that an identifiable contract be a threshold determination. The contract may be oral or written, expressed or implied. The case at bar is an oral contract, if any. Sections 28-2-101, MCA et seq. cover the statutory considerations regarding contracts. In Section 28-2-102, MCA the law sets forth the four essential elements of a contract, namely:

- (1) identifiable parties capable of contract;
- (2) their consent;
- (3) a lawful object; and
- (4) a sufficient cause or consideration.

Certainly Mr. Morris and Montana Forward had the capacity to contract and their consent is clear if for no other reason that on at least two occasions prior to the case, the same contract terms were executed. The object of Morris piloting candidate Waltermire was certainly lawful and the payment of \$100 per day plus expenses in exchange for piloting the aircraft, clearly satisfies the statutory requirements of consideration.

Thus, if Morris were not an "independent contractor" excluded from being an employee by the definition in Section 39-71-118, MCA, coverage exists.

In determining whether a person is an "independent contractor" or an "employee" for purposes of Workers' Compensation, the Montana Supreme Court has gone to great length to examine the issue. The leading Workers' Compensation case in this regard is Sharp v. Aetna Casualty and Surety Co., 178 Mont. 419, 584 P.2d 1298 (1978).

Beginning at page 424, of the opinion, the Court stated in Sharp, supra:

The statute involved in this appeal is section 92-438.1, R.C.M. 1947, which defines

"independent contractor" as one who renders service in the course of an occupation and:
"...(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and
"(2) is engaged in an independently established trade, occupation, profession or business." (Emphasis added.)

This statute clearly establishes a two-part test that must be met before an individual is classified as an independent contractor. First, he must be free from the control of his employer, under his contract and in fact, in the performance of his services. Second, he must be engaged in an independently established occupation. Appellant has conceded she meets the second part of this test, so our concern is with the first requirement, the absence of the "right of control".

Section 92-438.1(1), R.C.M. 1947, reiterates the basic test in Montana for determining independent contractor status, namely, the right of control over the person doing the work involved. "The vital test in determining whether a person employed to do a certain piece of work is a contractor or a mere servant, is the control over the work which is reserved by the employer." Kimball v. Industrial Accident Board (1960), 138 Mont. 445, 449, 357 P.2d 688. "The test to determine whether or not an employer-employee relationship exists ...is the so called control test. Under that test an individual is in the service of another when that other has the right to control the details of the individual's work." State ex rel. Ferguson v. District Court (1974), 164 Mont. 84, 88, 519 P.2d 151. Respondent has argued an employer must control the details of a performance before the performer is considered an employee. However, the determinative test is based on the right, not just the exercise, of control. Larson, Workmen's Compensation Law, Vol. 1A, Sec. 44.10, p. 8-19; Ferguson, supra.

Section 92-438.1(1), R.C.M. 1947, also states in determining this right of control,

attention must be directed to the employment contract and the fact of the employment situation. In the present case, we have no written contract before us to aid in making the determination of freedom from control, and the parties have not contended for the existence of an implied contract. We therefore, must look at the factual situation, pursuant to the statutory direction, to determine whether respondent-employer had the right to control the work of appellant.

Larson's treatise enumerates four factors to consider when attempting to determine right of control in a given situation. Those factors are: (1) direct evidence of right or exercise of control; (2) method of payment; (3) furnishing of equipment; and (4) right to fire. Larson, Sec. 44.31, p.8-35. The treatise further points out that the consideration to be given these factors is not a balancing process, rather "...independent contractorship...is established usually only by a convincing accumulation of these and other tests, while employment ...can if necessary often be solidly proved on the strength of one of the four items [above]." Larson, supra.

We should note that Section 92-438.1 R.C.M. 1947 cited in Sharp is identical to Section 39-71-120, MCA in the case at bar.

The defense premises much of its case on the fact that Montana Forward exercised virtually no control over pilot Morris. We concur to the extent that the details of flying were subject to Morris' own skills. Yet, as noted in Larson's treatise cited in Sharp there are multiple considerations to establish "control" beyond the details of performance itself. The four again are:

1. direct evidence of right to exercise of control;
2. method of payment;
3. furnishing of equipment;
4. right to fire.

2/7/91

EXHIBIT 10
DATE 2-7-91
HB 192

JONES HAULING
HARLEY W JONES
2060 BUTTREY LANE
MISSOULA MT 59802

DEAR REPRESENTATIVE MIKE FOSTER:

I AM CURRENTLY AND HAVE BEEN HAULING LOGS AS AN OWNER OPERATOR FOR 20 YEARS. I FEEL IT IS TIME FOR REGULATION OF THE LOG TRUCKING INDUSTRY. I'VE STATED BELOW 10 FACTS AND REASONS TO SUPPORT HOUSEBILL 192.

I WOULD LIKE TO ADD THAT FROM THE TIME I LEAVE HOME IN THE MORNING UNTIL I SHUT THE TRUCK OFF AT NIGHT, I AVERAGE 12 TO 16 HOURS A DAY. FOR MY AVERAGE WORKDAY, THE PAY IS NOT AN ADEQUATE WAGE TO MAINTAIN MY EQUIPMENT AND PROVIDE FOR MY FAMILY. WHEN THIS REGULATION PASSES, I WOULD HAVE A SAY IN NEGOTIATING FAIR WAGES TO COVER MY EXPENSES, AND MY EFFORTS PUT FORTH.

1.) CURRENT HAULING ARRANGEMENTS ARE VERBAL AND ON A TAKE-OR-LEAVE-IT BASIS. IF A GIVEN LOG TRUCKER DOES NOT AGREE TO THE VERBAL RATE BECAUSE IT IS NONCOMPENSATORY, THE CONTRACTOR OR SHIPPER ATTEMPTS TO FIND ONE WHO WILL.

2.) LOG TRUCKERS TRYING TO PROVIDE TRANSPORTATION SERVICES, FIND AT TIMES, THE RATES PAID TO THEM TO BE UNFAIR, INCONSISTENT, ARBITRARY AND SUB-STANDARD FOR THE SERVICE.

3.) UNDER CURRENT MOTOR CARRIER LAW, LOGS ARE CONSIDERED TO BE A NON PROCESSED AGRICULTURE COMMODITY AND ARE EXEMPTED FROM THE ACT AND THERE IS NO REGULATION REQUIRING WRITTEN CONTRACTS OR RATE SETTING BY THE MOTOR CARRIER ACT FOR LOG TRANSPORTATION BY TRUCK.

4.) HOUSE BILL 192 WOULD PLACE LOGS UNDER THE INTRASTATE MOTOR CARRIER ACT AS A REGULATED COMMODITY, ALLOWING COMPENSATORY RATES TO BE ESTABLISHED, EITHER AS AN INDIVIDUAL CARRIER OR AS A GROUP WITH IMMUNITY FROM ANTI TRUST LAWS.

5.) THE MOTOR CARRIER ACT HAS BEEN IN EFFECT FOR 60 YEARS IN MONTANA TO INSURE FAIR RATES AND A TRANSPORTATION SYSTEM FOR A LARGE NUMBER OF COMMODITIES TRANSPORTED WITHIN MONTANA EITHER UNDER WRITTEN CONTRACT OR BY COMMON CARRIAGE. RATES ARE ESTABLISHED BY OR FILED WITH THE MONTANA PUBLIC SERVICE COMMISSION.

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6.) HOUSE BILL 192 ESTABLISHES A SPECIAL CLASS OF CARRIERS, CLASS E, TO TRANSPORT LOGS IN THE STATE EITHER UNDER A WRITTEN CONTRACT OR AS A COMMON CARRIER.

7.) HOUSE BILL 192 WOULD REQUIRE WRITTEN CONTRACTS FOR TRANSPORTATION OF LOGS BY TRUCK. ALTHOUGH CURRENT LOGGING INDUSTRY PRACTICES INCLUDE WRITTEN CONTRACTS BETWEEN MILLS AND LOG CONTRACTORS WHICH INCLUDE COSTS FOR CUTTING AND TRANSPORTING LOGS PLUS A PROFIT, GENERALLY NO SUCH WRITTEN CONTRACT IS IN EFFECT BETWEEN THE LOG CONTRACTOR, WHO IS GENERALLY THE SHIPPER OF THE LOGS AND THE LOG TRUCKER.

8.) HOUSE BILL 192 WOULD REQUIRED THAT RATES FOR LOGS TRANSPORTED UNDER "COMMON CARRIAGE" BE COMPENSATORY AND APPROVED BY THE PUBLIC SERVICE COMMISSION.

9.) HOUSE BILL 192 WOULD PROVIDE FOR CONTRACT HAULING AND CONTRACT RATES MAYBE ALSO ESTABLISHED AND FILED WITH PSC.

10.) RATES TO BE ESTABLISHED WITH PSC APPROVAL BY LOG CARRIERS INDIVIDUALLY OR COLLECTIVELY MUST BE FAIR AND BASED ON THE COST OF THE SERVICE. SHIPPERS WOULD HAVE INPUT TO PSC FOR RATE ESTABLISHMENT.

YOUR SUPPORT WOULD BE GREATLY APPRECIATED FOR THE PASSAGE OF THIS BILL.

FOR FURTHER QUESTIONS, PLEASE CONTACT ME AT 258-6433.

SINCERELY,
JONES HAULING

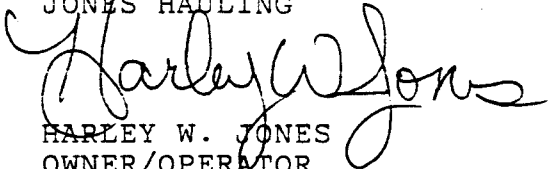

HARLEY W. JONES
OWNER/OPERATOR

EXHIBIT 11
DATE 2-7-91
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Mr. Chairman, Members of the Committee:

My name is Arletta Mrgich. I reside at 3112 Sinclair Creek Road in Eureka, Montana.

My husband Michael and I have owned and operated a log truck since 1964. We support House Bill 192. We feel that this bill will give us some stability in our industry for the first time.

I spoke before this committee two years ago, telling you of our financial plight. You heard testimony from both sides of this issue.

The truckers who spoke against regulation had two main fears. The loss of their jobs and undue regulation.

In the past 27 years, every time we asked for a raise, the mills threatened to buy their own trucks. That is certainly nothing new. They obviously couldn't own their own trucks as cheaply as we work or all the mills would own all the trucks.

Safety regulations, as in hours of service and DOT (CVSA) inspections came to pass anyway. I'm sure more will follow; with or without regulation.

Under current regulation, other Montana trucking businesses have a contract that, among other things, spells out hauling rates. Some trucks do have contracts now, but they are for the purpose of Workers Compensation liability, not rates. An ideal situation for us would be to have a written contract with either the logger or the mill.

If the logger works for a mill, he usually has a written contract that includes costs for cutting and transporting logs. A

contract would allow us to know, before we turn a wheel, how much that job pays. As things stand now, we usually have to wait until we get our paycheck to now what the rate is. The hauling rates are set between the logger and the mill in their contract. Or if the logger bids a Forest Service sale, he must take the hauling distance into account, but he doesn't ask the trucker to suggest a rate.

Most mills will not tell the trucker what a job pays. They say it is between the logger and the trucker. Most loggers pay the allotted rate to the trucks though there are a few loggers who routinely withhold a part of the truck rate to help pay for their logging costs.

We don't have this luxury. Fuel is our biggest expense. When the cost of fuel sky rockets and our rates don't change to reflect this increase, we fall further behind economically. Regulated truckers are routinely paid a surcharge in addition to the regular rate when the price of fuel takes a large jump, as it did this fall. The shipper must see that the trucker gets this surcharge. We have heard that some mills are paying a surcharge. Mr husband has hauled to three different mills since the fuel hike and if the mills are paying a surcharge, we haven't received it.

We have been placed in a no win situation. The loggers say they can't afford to pay us more yet we have no say in setting a haul rate during the negotiations. I really don't think that the haul rate is even a very important part of the loggers negotiating. He is more concerned, as he should be, with his logging costs. But that still leaves the trucks left out of our own rate negotiation.

We have returned again to seek regulation because in the last two years nothing has changed. The same rhetoric and intimidation exist now as it did then.

We are not asking for outlandish rates or any pay

EXHIBIT

11

guarantees; just an equal footing and compensatory rate

DATE

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I ask that you support this bill. Thank you.

HB

192

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HB 192

OPPOSITION TO HOUSE BILL NO. 192

BY

**RICHARD R. COVERDELL
COLUMBIA FALLS, MONTANA**

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and I'm testifying against this bill, House Bill #192, for the same reasons. I'm against state regulation by the Public Service Commission.

There is no need for regulation of log hauling in Montana by the P.S.C. or any other state agency. What is needed is a state mandated contract between log shippers and haulers stating terms and conditions agreed upon by both parties.

I haul under contract and have done so for years. I have attached copies of my contract to this statement I'm making along with a sample copy of the itemized computer read-out sheets detailing one of the hauls for that pay period. The contract is a simple, easy-to-read form. It states what is expected of each party, shipper and hauler, or company and contractor. It states when I'll be paid, which is the 10th and 25th of each month. It states that the rate is a mutual agreement. This means I can negotiate without going to the P.S.C. for approval. It also contains what is required of me pertaining to insurance, etc.

This brings up a question in my mind as to who the Worker's Comp. carrier is when there is no contract.

When fuel costs started climbing this past year I negotiated to defray the higher costs. I didn't have to go to the P.S.C.

If I end up on a haul that the rate isn't adequate, I can negotiate. I don't have to go to the P.S.C. "Negotiate" -- mutual discussion. The American way! Free Enterprise!

The computer read-out sheets are very easy to decipher. The top sheet shows the hauling or pay period, hauler number (the

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computer knows me as a number), the sale number, and in some cases, the sale unit number. It also shows my name, the sale name, the weight hauled in tons and pounds, the cost per ton which was the hauling rate at that time, the number of loads I hauled off of that sale that pay period, and the amount I earned. The bottom sheet shows the load ticket number, and to the right of it is the gross, tare and net weights.

In the truck I carry what I call my "black book". In it I enter the sale name and load ticket number. When I weigh in and out at the mill I simply subtract empty from loaded weight and get my net weight.

Read-out sheets are sent to me 4 to 5 days before every payday. I compare my black book figures with the read-out sheets. If there is a problem I can "squeak." I don't need to go to the P.S.C.! I'm not "ripped off" so much a load by the shipper for paper and payroll costs like many haulers are.

There have been hauls where I can't get my legal gross weight because of poor timber. Dead lodgepole can take up a lot of room and yet have no weight. On these hauls I'm paid for a legal load. I've hauled cleanup loads where I'm not even half loaded. Once again, I'm paid for a legal load. Under P.S.C. regulation this will not happen!

I don't have to buy "bingo stamps", pay filing fees, or worry about how many contracts I have. I don't have to open my home and let a state inspector in to inspect my properties, facilities, operations, accounts, service, practices, and affairs. I don't

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have to file annual reports, tariffs, schedules, etc., etc. All of this would be required as quoted under House Bill #192.

There is nothing in this bill that says I will be better off financially. House Bill #192 is nothing but a bill to create what I already have -- a contract. A simple contract! The difference is that House Bill #192 says I will be regulated by the state and that tariffs will be negotiated by a tariff bureau which allows the majority to be ruled by a few.

Thank you for letting me testify.

Richard R. Coverdell

9. The Contractor agrees to comply with all State and Federal Laws and U.S. Forest Service Rules, including but not limited to those governing hauling, load limits, safety and comparable laws and rules.

10. The Contractor agrees to carry on his activities under this contract in a safe and/or legal manner so as not to endanger the person or property of the Company or it's employees, agents or other contractors.

11. It is specifically understood that the Contractor shall secure and keep in effect during the term of this contract and any period by which said contract may be extended, a policy or policies of public liability insurance sufficient to satisfy any and all possible claims for personal injuries or property damage arising from or as a result of the conduct of his operations under this contract. Evidence of this insurance must be filed with the company.

12. Contractor further agrees to hold the Company forever free and harmless from any and all claims, debts, or charges arising out of or as a result of the conduct of his operations in the performance of this contract.

13. It is further agreed that neither this contract nor any interest herein can be assigned by the Contractor, without the consent, in writing of the Company.

14. The contract cannot be altered, modified or deviated from, unless such alterations, modification or deviation shall be in writing and signed by the parties hereto.

15. This contract shall extend to and by binding upon and inure to the benefit of the Contractor, his heirs and personal representatives, and the Company, it's successors and assigns.

16. It is understood and agreed that this contract is not severable and that time is of the essence of the performance, and that, in the event the parties hereto shall fail to perform this contract, or any part thereof, at the time and in the manner specified except for a strike, riot, civil commotion, war, whether declared or not, or Act of God, either party may, at its option, with five (5) days written notice upon the other terminate this contract and either party shall have no further rights or interest under this contract. It is further understood and agreed that the waiver of one or more defaults shall not constitute or be construed as a waiver of subsequent defaults or an alteration of this contract or of the right of the Company to insist upon strict compliance of the term hereof.

17. This agreement shall remain in full force and effect to and including June 1, 1991, unless breached prior thereof and notice of termination is delivered in writing to the other party. This agreement may be continued for specific limited periods of time by endorsement herein so specifying such continuance, signed by each party hereto.

18. The log hauler and his employees will operate at all times in accordance with Best Management Practices as adopted by the Montana State Environmental Quality Council in January, 1989.

IN WITNESS WHEREOF: The parties hereto have duly executed this contract, the day and year hereinabove written.

WITNESSES:

Contractor

F.H. Stoltze Land & Lumber Company

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LOG HAULING CONTRACT

THIS AGREEMENT, made and entered into, in duplicate, this 1st day of May, 19 90, by and between Richard Coverdell of 995 Walsh Rd., Columbia Falls, MT party of the first part, hereinafter referred to as "Contractor" and the F.H. Stoltz Land & Lumber Company, a corporation, the party of the second part, hereinafter referred to as the "Company".

WITNESSETH: The parties hereto for and in consideration of their mutual covenants and agreement herein contained, do agree and contract with each other as follows:

1. For and in consideration of the sums hereinafter mentioned to be paid by the Company to the Contractor, the Contractor agrees and undertakes to provide all trucks and other equipment and all labor employed by him necessary to haul and deliver in an efficient and workmanlike manner customary to the log hauling trade and business to the Company at Half Moon or as designated, such sawlogs, poles and other forest products as said Contractor may be requested to haul from various surrounding areas in which saw logs, poles and other timber products may be produced by the Company, its servants, agents, employees, or contractors.
2. The schedule of payment shall be mutually agreed to by Contractor and Company. Payment will be made on a per ton mile basis.
3. The Company agrees to pay the Contractor in full for all sawlogs, poles and other forest products hauled. Payment shall be paid on the 25th of each month for logs delivered between the 1st and the 15th of such month, and on the 10th day of each month for logs delivered between the 15th of the preceding month and the 1st day of the present month.
4. The Contractor further agrees that all sawlogs, poles and other forest products shall be delivered to the Company free and clear of all liens, encumbrances or claims for labor, materials, or supplies, and, in the event any lien be filed or claim be outstanding for which a lien might be filed, the Company shall have the right to retain and keep enough moneys to protect itself from said lien or claim. The Company, at its option may demand and require production of receipts or satisfactory evidence showing payment in full of all labor employed in the performance of this contract and assessments or other payments accrued under State and Federal laws on account of labor employed under this contract, and no payments shall be made hereunder until such receipts, when demanded, have been presented to the Company.
5. The Contractor shall immediately take out, at his own expense, Workmen's Compensation coverage for every person in his employ and said Contractor shall otherwise fully comply with all of the Federal and State laws for each state in which he operates under this agreement relating to Workmen's Compensation and Industrial Insurance as well as Unemployment Compensation, and other appropriate State laws governing employers, as well as any amendments made effective during the term of this agreement.
6. The Contractor agrees that he will abide by the Fair Labor Standards Act of 1938, as amended, and the rules and regulations promulgated thereunder, as well as the Social Security Acts, Internal Revenue Acts and other Federal Acts as shall govern employers, together with the rules and regulations promulgated thereunder, and any amendments that may be made effective in said laws during the term of this agreement. The Contractor shall also comply with the Occupational Safety and Health Act, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967, Executive Order 11246 of the President of the United States, Section 503 of the Rehabilitation Act of 1973, 38 U.S.C. 2012 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Employee Polygraph Protection Act, and any amendments that may be made effective in said laws during the term of this agreement.
7. It is agreed and understood that the parties hereto and in the relationship to each other of independent contractors and that the Contractor is contracting independently of the Company and that the parties in no way stand in the relationship of master and servant, principal and agent, or employer and employee. It is further understood and agreed that excepting as herein provided, the Contractor shall be and remain free from the direction and control of the Company in all particulars in the performance of this agreement.
8. The Contractor agrees to furnish all labor, supplies and equipment necessary to the performance of this agreement.

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HAULER COST DISTRIBUTION SHEET

JANUARY 1-15, 1990

HAULER: 84

RICHARD COVERDELL

SALE: 14-C49214

GROSS CONCEP PEST CONTROL

UNIT:

ACCOUNTS PAYABLE: 7-13210

	WGT/LBS	TON/VOL	COST	EXTENSION
HAULING TO STOLTZE MILL	810660	405.33	\$7.3793	\$2991.05

TOTAL DOLLAR AMOUNT: \$2991.05

NUMBER OF LOADS:

TRUCK: 15.00

RAILCAR: .00

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HAULER DETAIL LOAD REPORT

JANUARY 1-15, 1989

HAULER: 34

RICHARD COVERDELL

SALE: 14-045214

GRUBB CONIFF PEST CONTROL

UNIT:

TICKET/LOAD	WEIGHT	GROSS	TARE	NET	VOLUME
03391		79360 -	25900 -	53460	
03395		79900 -	25760 -	54140	
03400		79960 -	25840 -	54120	
03453		80240 -	26160 -	54080	
03458		79880 -	25620 -	54260	
03463		80620 -	25520 -	55100	
03466		79860 -	26000 -	53860	
03468		80260 -	25720 -	54540	
03473		79840 -	25700 -	54140	
03479		79660 -	25800 -	53860	
03483		79900 -	25640 -	54260	
03487		79580 -	26180 -	53400	
03492		80080 -	26000 -	54080	
03498		80420 -	26140 -	54280	
03503		79020 -	25940 -	53080	

1198580 387920 810660

TRUCK LOADS: 15.00
RAILCAR LOADS: .00



EXHIBIT 13
DATE 2-7-91
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Sun Mountain Logging

Sherm Anderson

P.O. Box 287
Deer Lodge, Montana 59722
February 7, 1991

TESTIMONY ON PROPOSED LEGISLATION TO REGULATE INTRASTATE LOG HAULING HB 192

Mr. Chairman, Members of the Committee:

For introductory purposes, I am Sherm Anderson, owner of Sun Mountain Logging Co. located in Deer Lodge, Montana. I am a logging contractor. I perform the complete logging process from felling, skidding, processing, loading and road building. Aside from logging, I own fifteen log trucks which operate within the Deer Lodge area hauling logs.

I have been in the logging business as a sole proprietor for fifteen years. Prior to that I worked with my father who was also a logging and log hauling contractor.

I oppose House Bill 192.

I cannot understand why we in the logging business would want to place more regulations on our industry than we already have.

In studying the proposed bill I can see no benefit to be gained from being regulated by the Public Service Commission. If the purpose of the bill is to regulate the amount of log trucks in the logging industry, it will not. I believe, if anything, it will cause the shippers, who control the loggers and truckers, to look more toward larger trucking firms to haul the logs, therefore

allowing shippers to deal with only one contract and one operator instead of many. This would create less need for the independent owner-operator type of operation as we know them today.

If the purpose of the bill is to regulate the price for hauling logs, I do not see how that can work either. It proposes that contract rates can be 90% of tariff rates, which would again push shippers toward larger contractors for a lesser rate. If we were able to get the tariff rates up higher and more profitable than current rates why, then, wouldn't we see the shippers, mainly being either the logging contractors or mills, purchasing and operating their own trucks, hauling their own logs under private carrier status, therefore not being regulated at all.

Our industry has so many variables throughout the state that other industries are not confronted with such as the haul roads off highway, the weather, the mud, the snow, the working hours, the loading and unloading conditions, the number of different jobs being operated on, that I do not see how workable tariff rates could be established and filed with the PSC on a timely basis.

Aside from all the reasons aforementioned, there are a lot of unforeseen problems that may crop up from the PSC itself. Once the bill passes then we are subject to the rule-making process of the PSC and are governed or regulated by their governing body.

Mr. Chairman and Members of the Committee, I respectfully recommend a no pass on this bill.

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Any Committee Members with agricultural or military experience should be able to relate to logging and log hauling. They, like we knew that the best laid plans must be modified daily and even hourly to keep abreast changes in weather and outside agencies.

Many timber companies have several cutting contracts in many drainages going concurrently. Trucks are shifted from job to job some time trip to trip to meet various needs or to prevent harm to the environment. A couple of very common haul changes are caused by shortage of decking space or a rainstorm in a drainage where continued hauling could cause water quality problems. Currently a simple radio call to trucks enroute can divert us from one drainage to another thus preventing problems.

Haul routes are changed on a trip by trip basis to prevent safety or environmental problems. Our normal hauls are over three types of road - native, gravel and black top and may involve favorable or adverse grades.

How can a regulating agency keep up with rates where road surface and even routes can change so often? I don't think it would be possible.

Leroy Christofferson

Mr. Chairman, Members of the Committee:

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My name is Suellen Brady. I reside at 535 Reservoir Road in Whitefish, Montana. My husband, Sam, and I have owned and operated a log truck since 1975. I am here today to ask for your support for House Bill 192.

Since the Log Truckers Association was here at the Capitol two years ago asking for regulation, many of our problems have been made clear to you. You realize that we have NEVER been given the opportunity to negotiate our own hauling rates. We DO NOT have a contract with the shipper. We DO NOT have a contract with the contractor that spells out our hauling rates. Our contractor bids on a job with the shipper with hauling rates included. We are always TOLD what the rate is once we've started hauling, but our verbalization that the contract does not keep up with our increased expenses fall on deaf ears. We need a contract that spells out what we will be receiving PRIOR to any hauling

Contracting rates should be negotiated between the contractor and the shipper. Hauling rates should be negotiated between the hauler and the shipper. I would not tell a contractor what he should bid for a job because I am not current, nor interested in what his expenses are. He, on the other hand, should not be responsible in keeping track of trucking expenses.

Some people against regulation say the paperwork is too demanding. I say good bookkeeping is a plus for any business. Some people against regulation say it will put the contractors out of work. I say it will do just the opposite. These contractors will be able to take care of their own business, and not some truckers' besides. Becoming regulated develops clear and precise contract between the two parties concerned about hauling prices. I don't understand contractors or trucks fighting regulation.

Regulation keeps things above board, and in writing. Maybe that's the whole point. What is there to hide in a contract? We will get rid of the middleman, and therefore rid them of the confusion, or any surprises concerning compensation on our part.

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For example, last fall we hauled for a contractor who held out money from our paycheck. A call to this contractor revealed that this money was for the shippers fire liability that every truck was required to pay. It only amounted to \$2.33 for the two loads we hauled, but he said it averaged out to \$432 a year for his regular haulers. We have NEVER been charged this fee with another contractor even though we haul for the same shipper. Why would the shipper require one contractor to withhold this money and not the other contractor?

We all know about inflation. Regulation would let us keep up with the spiraling costs of fuel, parts and labor. As recently as our last paycheck we are receiving 17 cents a ton LESS than we were in 1986. Our job today is side by side from the job we hauled on in 1986, so the distance is the same, the destinations are the same, the shipper is the same, the contractor is the same, yet our earning power has DECREASED. Not stating other increased costs, our fuel alone has jumped from 89 cents a gallon in 1986 to upwards of \$1.53 on this job. If we were regulated, we would have been able to spell out our operating costs which would have reflected these higher fuel costs prior to hauling any logs. At least we would have been given the chance to reflect on the contract and turned it down if it was a negative business deal. There is no negotiating. It's TAKE IT OR LEAVE IT!

How would you feel if YOUR current wages started to RETROGRADE and your complaint fell to deaf ears? Would you not also take steps to develop a mediator, or regulations laws, that would prevent that from happening again? That is why we are here today. Opponents cannot deny that any

business needs to have a positive flow of compensation. The issue may seem
futile to them, but it is crystal clear to me. WE ARE EARNING 17 CENTS A
TON LESS plus the loss of increased fuel costs, parts, labor & other
inflationary indexes THAN WE DID 5 YEARS AGO. I wouldn't scoff at the
notion that we will soon be told we have to haul for even less. Where does
it stop?

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We need your vote on House Bill 192 for our economic viability. We are
trying to develop a stable economic basis for log haulers.

Most all of Montana's motor carriers are regulated. Log haulers are not
because a log is considered a non-processed agriculture commodity,
therefore requiring NO written contracts. I believe that once these trees
are cut, delimbed, and placed on our truck, they have been processed.
Therefore, we would be allowed to have a written contract spelled out under
current motor carrier law.

I would like to say that since we were here 2 years ago that nothing has
changed. Unfortunately, we are being taken advantage of even worse. Please
give us the chance to negotiate our own hauling rates. Who knows better
than us what our operating costs are. Give us the right to conduct our own
businesses in a fair and equitable manner without FEAR, INTIMIDATION, and
CUT-RATE tactics. Nobody is asking for guaranteed income, guaranteed
profits, or guaranteed jobs. We are asking to be treated as businessmen
and women. We would like to carry out our businesses in a respected
manner, including being fairly compensated for our equipment and our time.

Thank you for your time.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

1 of 2

Seed Potato
B:11

Hiways COMMITTEE BILL NO. HB 37
DATE 2-7-91 SPONSOR(S) Rep. Davis
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY GILMORE	MONT. D.O. H.		X
Russell E. Wrigg	IL IL		X
Nan Lake	Montana Potato Growers	X	
Sid Schutter	Montana Potato Growers	X	
John Crumley	Montana Potato Growers	X	
Art Mangels	self	X	
Walter Christoff	Self		X
Dan Kimm	Manhattan Potato Pro.	X	
Brent Anderson	Canister Logging Inc		X
Neil			
Daniel H. High	Brooks's Ranch Inc.	X	
Pat Wilhelm	Self		X
Mike Sun	Montana State Univ	X	
Nick Schutter	Potato Growers	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

2 of 2

Seed Potato Bill

Highway COMMITTEE Rep Davis BILL NO. HB 37
DATE 2-7-91 SPONSOR(S) Rep Davis

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dale Huhnig	Potato Grower	X	
Francis Kohnke	Ex L L	X	
DAVE GALT	Dept of Highway		X
Robert & Sharon Snell	Flat. Potato Growers	X	
Ken Coffey	La Ke Potato Grower	X	
Earl M. Wahlen	Potato Rowan	X	
Ed Stahl	Potato Grower	X	
John Stahl	Western Ag	X	
Nell Mangels	Potato Grower	X	
Barbara Jones			

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Log Bill

Hiways COMMITTEE BILL NO. HB 192
DATE 2-7-91 SPONSOR(S) Rep Wenzelried
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Blue Darby mt	Self	X	X
Bill Noble	Stoltze Conner		X
Anna Pomanchev	Pomanchev Logging		X
Bryon Murrell	Self - B+M Logging		X
Scott Burnham	Self L.T. Trucking		X
RICHARD R. COVERDILL	SELF		X
Neil Meyer	Neil Logging		X
Brent Anderson	Conifer Logging		X
Dale Hunkin	Potato Grower		
Arletta Mrgich	self	X	
Lyle Doty	LTC	X	
Sue Ellen BRADY	SELF	X	
Darby W Jones	Jones Hauling	X	
Mary Lou Peterson	HP #1	X	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Log Bill

DATE 2-7-91 SPONSOR(S) Rep. Wanzensried COMMITTEE _____ BILL NO. HB 192

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Denny McManus	Self	X	
Foot McManus	Self	X	
Wm. Cuddy	Self		X
Barton Cooper	Self		X
Martin Jawbrow	PSC	— NA —	
Seny Christoffer	Self		X
Bill Cussins	Self		X
Bill CowGER	SELF		X
Joann Cowger	Wife		X
Art Perry Sr.	A Perry Logging		X
Jay Hargrove	Hargrove Trucking		X
Donald A. Ray	Self Trucking		X
Shum Anderson	Shum Mountain		X
Jacque Christensen	Self		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HIGHWAYS

COMMITTEE

BILL NO. 192 LOGGING

DATE 2-7-91 SPONSOR(S) REP WANZENREID

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
James H Slack	Slack Logging	✓	
RAY DUDLEY	DUDLEY Trucking	✓	
Harley W Tones	Tones Hauling	✓	
HERB ORR	Herb Orr Trucking	✓	
Battu Slack	Slack Trucking	✓	
Harry Schneider	Schneider Trucking	✓	
Ed & L Schrader	Schrader Log hauling	✓	
Trevett Adkins	Adkins Trucking	✓	
R. P. Adkins	Adkins trucking	✓	
Dave Bibb	Hankinson Trucking	✓	
Ed Hankinson	Ed Hankinson Trucking	✓	
John Hankinson	Hankinson Trucking	✓	
Gary Ay	G & L Hauling	✓	
Noie Ay	G & L Hauling	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HIGHWAYS COMMITTEE BILL NO. 192 LOGGII
DATE 2-7-91 SPONSOR(S) REP WANZENRIED

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kurt Vaughn ^{VAUGHN}		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ted Smith	SELF	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ray Cebulski	Cebulski Trts, Inc.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BARB CEBULSKI	Cebulski Trucking, Inc	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dixie Meyer	Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Carla Anderson	Conifer Logging Inc	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lonnise Hankinson	Lonnise Hankinson Trucking	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VERN Fredericks ^{Kila MT.}	Self 755-2378	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Clairice Coverdell ^{Kila Col. Falls}	Self 892-5824	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dorothy Fredericks ^{Kila mt.}	Self 755-2378	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Judy McBeth ^{Kila mt.}	Self 755-1806	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m. McBeth ^{Kila mt.}	Self 755-1806	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mike McBeth ^{Kila mt.}	Self 755-1806	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ron Newton ^{Columbia Falls}	892-4132 Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HIGHWAYS

COMMITTEE

BILL NO.

192 LOGGING

DATE 2-7-90

SPONSOR(S)

REP WANZENREID

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Rita & John Boss Jr. 851 ASH ST. Kalispell, Mont.	self		X
Edna L. Newton 1167 Dorothy Ave Columbia Falls	892-4132 Self		✓
Carol J. Cresmore	237 airfield Rd Libby, mt. - self		✓
Paul Birkby	Kal 1602 Lincoln		✓
JOEL NELSON	33 SHALOM KERRY DR. - LIBBY	✓	
JOHN DAHLBERG	387 ROOTENAI DR. - LIBBY	✓	
Don Simpson	Kal. mt.	✓	
Brian Haughel	WITNESS	✓	
Warren L. Ewert warren Ewert	Kal. MT.	✓	
Leon E. Hylton	Kalispell	✓	
Heleen Fielding	Kalispell	✓	
ARVON FIELDING	ARVON FIELDING Trucking Kalispell	X	
Arvid Mitchell	Kal. Trucking Ac.	X	
MIKE MCGICK	Log hauling	X	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Highways COMMITTEE 192 BILL NO.
DATE 5-7-91 SPONSOR(S) Rep Wangerneid
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Daniel M. Brandt	Dave Brandt Trucking	X	
Wayne Burt	Mont PSC		
Ben HAVDAHC	Mont. Motor Carriers Assn	X	

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