

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chairman on January 24, 1991, at 1:00 p.m.

ROLL CALL

Members Present:

Cecil Weeding, Chairman (D)
Betty Bruski, Vice Chairman (D)
Bill Farrell (R)
John Harp (R)
Francis Koehnke (D)
Jerry Noble (R)
Jack Rea (D)
Lawrence Stimatz (D)
Larry Tveit (R)

Members Excused: None

Staff Present: Paul Verdon (Legislative Council).
Pat Bennett, Secretary

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

Announcements/Discussion: None.

HEARING ON SENATE BILL 109

Presentation and Opening Statement by Sponsor:

SENATOR PAUL SVRCEK, District 26, stated his bill would require state vehicles to use gasohol in areas where it is available and commercially reasonable to use. It is no longer referred to as gasohol and would need to be changed within the bill to ethanol blend gasoline. It is not intended to put any burdens on state employees. In the bill there are no adverse actions against anyone not using ethanol blend gasoline. The purchase records which are required are not be used to see who is complying, but rather as a gauge to see how much is being purchased and used. Senator Svrcek stated that success, in the beginning stages, is determined by finding and exploring a niche market and exploiting it successfully. If the state wants to be favorable toward business, we ought to be fostering niche markets where we can.

SENATOR SVRCEK informed the Committee that this will help Montana, as well as the nation, move toward energy independence. Ethanol is a clean fuel and contributes to cleaner air. In Denver it is required to sell ethanol fuel because they have found it contributes positively to reducing air pollution. The fostering of the ethanol fuel industry in the State of Montana would create a new market for farm products. It is manufactured from grain, corn and also from crop residue. Senator Svrcek said it is the kind of industry we would like to have in Montana. It's clean, it adds value to Montana products and it will employ Montana people.

Proponents' Testimony:

KAY NOREMBERG representing WIFE, (Women Involved in Farm Economics) expressed support of Senate Bill 109. (SEE EXHIBIT 1) Ms. Norenberg also submitted written testimony from SHIRLEY BALL supporting SB 109. (SEE EXHIBIT 2)

DON STERHAN representing Alcotech stated he has been involved in the ethanol industry for the past three years. Alcotech is Montana's only ethanol production company. This is not a competitive to gasoline, ethanol is merely a fuel additive. It is designed for a cleaner burning additive and reduces the carbon monoxide emissions by 25 to 30% proven in EPA studies. Ethanol is blended on a 9-1 ratio for a 10% blend. Historically, there is good support for the ethanol industry, we need to convert that support to a commitment from the market place. That is what is being addressed with this legislation.

BOB STEPHENS, MT Grain Growers, stated they are in favor of anything that helps their energy policy. It does give another market for grain.

TOM BREITBACH, Northern Plains Resource Council submitted testimony in support of SB 109. (SEE EXHIBIT 3)

LINDA LEE testified on behalf of the Montana Audubon Legislative Fund in favor of SB 109. (SEE EXHIBIT 4)

LORNA FRANK, Montana Farm Bureau testified in support of SB 109. (SEE EXHIBIT 5)

JIM JENSEN representing the Environmental Information Center, stated there is a bill in drafting dealing with energy policy for the state of which ethanol development is a part. This bill is compatible with the one being drafted.

SENATOR LARRY TVEIT, District 11, rose in support of SB 109. He stated that looking at this broad state, the agriculture sector and those transportation costs from various areas within the state as they move grains to market, it gets pretty expensive. The freight rates for shipping grains on railroad at the present time is \$1.00 per bushel.

SENATOR TVEIT said the new farm bill will supposedly shut down 20% of the farmers nationwide. He stated it is time to look at alternative energy to become energy independent.

SENATOR FRANCIS KOEHNKE asked to be listed as a supporter of SB 109.

Opponents' Testimony:

BILL STRIZICH, Chief Maintenance Engineer for the Department of Highways, said he opposes the bill as it is. The opposition is based on cost, the way it is drafted now the added cost to the Department of Highways could be as much as an added 10 cents per gallon. The current consumption of gas annually is over 1.6 million gallons per year. The current discrepancy in the cost of a gallon of gasohol bulk purchase in the state of Montana is just over 5 cents per gallon. At current rates, the additional cost for fuel for the Department of Highways would be \$90,000 per year. Other than the requirement to purchase gasohol, even if the cost is as much as 10 cents higher, the Department does not oppose the use of gasohol.

Questions From Committee Members:

SENATOR REA asked Mr. Strizich about the price discrepancy.

BILL STRIZICH said at the present bulk-purchase rates the price discrepancy between gasohol and regular gasoline is just over 5 cents per gallon. If the full 10 cent price variance were realized there would be an additional cost estimated to be \$78,000 per year.

SENATOR HARP asked who helped work up the fiscal note. He requested information about the assumptions.

SENATOR SVRCEK stated he had just received the fiscal note prior to the hearing.

SENATOR NOBLE asked Mr. Strizich about vehicle upkeep.

MR. STRIZICH stated they do not consider it to be anything significant.

Closing by Sponsor:

SENATOR SVRCEK said with regard to Mr. Breitbach's suggestion to amend this bill, he would rather it not be amended. There is another bill coming through the process which will set a time limit for requiring these vehicles to use gasohol. Responding to Mr. Strizich, he stated that he felt the \$90,000 additional invested by the state to provide a foothold for an industry is a pretty good investment. If the state were to make it a policy to use gasohol in state vehicles, the gasohol industry might see it as an incentive to make prices competitive.

HEARING ON SENATE BILL 132

Presentation and Opening Statement by Sponsor:

SENATOR LARRY TVEIT, Senate District 11, distributed an illustration. (SEE EXHIBIT 6) He said the purpose of the bill is to follow federal regulation which has just come into date on a law Montana has currently in place. This bill will amend Sections 61-10-104 MCA. The transit industry who has been moving new vehicles for manufacturers and dealers petitioned the Federal Highway Administration for rules establishing uniform length limits across the nation. The Federal Highway Administration performed extensive testing regarding the safety of moving vehicles by triple saddle-mount method. After reviewing test results, they issued a preemptory regulation allowing triple saddle mount combinations of 75 feet. This regulation was effective September 10, 1990. Montana's current statute is limited to 65 feet. Therefore, the Montana statute must be amended to agree with federal standards.

Proponents' Testimony:

BEN HAVDAHL, Montana Motor Carriers Association, stated that the last Legislature authorized a triple saddle mount combination, but failed to ramp the extra 10 feet. The MMCA supports SB 132.

DALE GALT, Administrator, GVW, Department of Highways, stated the Federal rule prohibits any state from limiting any triple saddle mount vehicles to less than 75 feet. Failure to comply with this requirement could leave the state open to a lawsuit. Since September 10th these vehicles have been allowed to transport across Montana up to 75 feet without a permit. Passage of this bill will put the state in compliance with federal regulations.

Opponents' Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SENATOR TVEIT closed the hearing on Senate Bill 109.

EXECUTIVE ACTION ON SENATE BILL 132

Motion:

SENATOR HARP MOVED that Senate Bill 132 DO PASS.

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

MOTION PASSED UNANIMOUSLY that SENATE BILL 132 DO PASS.

HEARING ON SENATE BILL 101

Presentation and Opening Statement by Sponsor:

SENATOR JACK REA, District 38, stated Senate Bill was at the request of the Public Service Commission. He distributed an amendment (SEE EXHIBIT 7) which inserts language which was inadvertently left out.

Proponents' Testimony:

WAYNE BUDT, Administrator, Transportation Division, Public Service Commission, testified in support of SB 101. (SEE EXHIBIT 8)

STANLEY T. KALECZYC representing Watkins and Shepard Trucking testified in support of SB 101. (SEE EXHIBIT 9) He also submitted the Montana Supreme Court decision. (SEE EXHIBIT 10) He said Ray Koontz, who is the director of operations for Watkins and Shepard Trucking, would be happy to answer any questions.

BEN HAVDAHL, representing the Montana Motor Carriers Association, stated they entered into this case as a friend of the court by filing a friend of the court brief on behalf of the Public Service Commission in support of their procedure. He stated that one of the problems with the court decision is that the court said the solution is not for the court to rewrite the regulatory legislation, the solution is for the agencies to consider their over-lapping requirements and to tailor their procedure accordingly. The Montana Motor Carriers Association supports SB 101.

Opponents' Testimony:

None.

Questions From Committee Members:

SENATOR HARP asked Wayne Budt about the second party who was interested in the ability to bid on a contract with OPI and the requirements for the ability to bid on this contract was a permit the PSC offers, but before the guy could qualify he had to have this permit.

WAYNE BUDT stated that anyone can bid, but before he could operate he would have to have a PSC permit.

SENATOR NOBLE asked if this legislation had been in place prior to this bid mentioned, what would have been the outcome of the bid?

WAYNE BUDT stated that the outcome would have been exactly the same. This is just clarifying what the statute said before. It does not change the content of the statute.

PAUL VERDON, Legislative Council Staff, stated that he recently drafted a bill for a member of the House which amends this same section of the law to allow that privilege in Subsection B, allowing solid waste to be transported under contract with a refuse disposal district. If that bill proceeds through the House and the Senate, will there be a need to coordinate the two.

WAYNE BUDT said he didn't think they would need to coordinate the two bills. If the amendment goes back on and this bill passes, you would need to add solid waste district along with the state government contract.

JOE ROBERTS, representing Howard Roberts and Sons, stated he did not appear as a proponent to this legislation, but rather to inform the Committee about the other bill which will amend this same section which will add "USDA Donated Food Commodities" in that exemption. As the law stands now, you can have the bidding process, but there is still only one authority who gets in.

Closing by Sponsor:

SENATOR REA closed the hearing on Senate Bill 101.

EXECUTIVE ACTION ON SENATE BILL 80

Motion:

SENATOR NOBLE MOVED that Senate Bill 80 DO PASS.

Discussion:

DAVE GALT, GVW, Department of Highways, explained the permitting system.

Amendments, Discussion, and Votes:

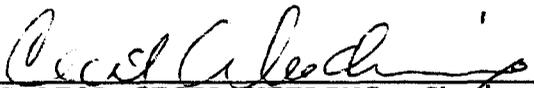
None.

Recommendation and Vote:

MOTION PASSED UNANIMOUSLY that SENATE BILL 80 DO PASS.

ADJOURNMENT

Adjournment At: 2:45 p.m.



SENATOR CECIL WEEDING, Chairman



PAT BENNETT, Secretary

CW/pb

Jan. 24, 1991
HB 144 & SB 109
Kay Norenberg

EXHIBIT NO. 1
DATE 1-24-9
BILL NO. SB109

Mr. Chairman, and members of the committee. My name is Kay Norenberg representing WIFE (Women Involved In Farm Economics).

We would like to go on record in support of this bill. Wife has been involved with trying to promote ethanol since WIFE's inception in 1977.

We feel that ethanol is environmentally sound and economically smart. It will reduce the dependence on foreign oil and is a renewal source of energy

Ethanol is a superior, high octane fuel. and can provide good performance for the vehicles.

Please give this bill a do pass. Thank you.



WIFE Women Involved in Farm-Economic

SHIRLEY BALL

Phone 406-785-4731

South Route 206
Nashua, MT 59248

Testimony on HB 144 Shirley Ball

This letter is in support of HB 144. I apologize that a conflict will keep me from testifying in person. I would like to enter as testimony the attached copy of a letter I sent to Governor Stephens as a recommendation that Montana state vehicles use ethanol blended fuel whenever possible. The USDA and the US Department Of Energy have made that a requirement of their vehicles and the press release from the USDA is also attached.

I would like to recommend that the wording in HB 144 be changed by substituting the words "ethanol blended fuel" for "gasohol". The term gasohol is no longer used by most of the industry. When it was used, it had a legal definition consisting of 10% 200 proof (pure) ethanol, and 90% unleaded gasoline. My reason for making this recommendation is that "gasohol" could be restrictive and could eliminate the chance to use a regular gasoline blended with ethanol if the "legal definition" were still being adhered to. The definition in (2) may take care of that worry, but I feel that using the term "ethanol blended fuel" cleans up the language.

I would also recommend eliminating (6), as the highway patrol does successfully use ethanol blended fuel in other states.

I urge you to adopt ^{HB} ~~HB~~ 144.

Thank you

Shirley Ball

42.2
1-24-91
5B 109

WIFE Women Involved in Farm Economics

SHIRLEY BALL

Phone 406-785-4731

South Route 206
Nashua, MT 59248

January 3, 1991

Governor Stan Stephens
Capitol Station
Helena, MT 59620

Dear Governor Stephens,

The organization of Women Involved in Farm Economics (WIFE) is extremely interested in ethanol fuel. Increased production and use are goals WIFE members have continuously worked towards, at both federal and state level.

Studies have backed up WIFE's belief that ethanol production will provide markets that will increase the prices farmers receive for their commodities by 10¢ to 20¢. Those studies also prove that farm communities and states will benefit through jobs and increased tax base if ethanol facilities are located in rural areas. In the "added value" category, ethanol production is considered one of the best.

Ethanol is a renewable, clean fuel. Recent Federal legislation will require that clean fuels such as ethanol be used in highly polluted areas as a means of cleaning up the air. The good Lord willing, feedstock for ethanol can be produced year after year on America's farms.

WIFE supports a requirement that government cars run on ethanol blended fuel whenever possible. Ethanol is a superior, high octane fuel, and can provide good performance for the vehicles.

A survey of WIFE members and spouses participating in the 1987 convoy to Denver in vehicles powered by ethanol blended fuel, showed the cars ran great, and good mileage was reported. Many of those farmers use ethanol blend on their farm operations as they see it as a quality fuel that could increase the life and performance of their gas powered farm machinery. Documented fleet studies in other states show positive results.

On a personal note, ethanol blended fuel has been available in our community for many years and we have used it exclusively. It is delivered in bulk for farm use, and we buy it through the pumps for our road vehicles. The "Super unleaded" is sold at the same price as the "unleaded regular".

This price is possible due to the Federal Excise tax incentive. In 1987, I was a member of a seven person national panel appointed by USDA Secretary Lyng to study the "Cost Effectiveness of Ethanol". That study, and others since, have looked at the tax incentive issue, and agree that ethanol could not compete at the market place without incentives. However, an in-depth look found that the benefits mentioned above, as well as savings in the cost of the farm program more than offset the expenses incurred by the incentives.

A further look at the incentives has shown that virtually every form of energy, including nuclear, gas, coal, oil, hydro, and solar has had, and continues to receive some form of government support that lowers costs or encourages production and distribution.

Oil production, for instance, has been supported by a host of policies including expensing of exploration and development costs, percentage depletion allowances on producing wells, stripper well price incentives, and federal research and development activities. Indirectly, the federal government supports the petroleum industry infrastructure by providing funds for the construction and maintenance of ports and waterways to handle oil tankers, tanker construction and operation, and pipeline construction and maintenance

It has been estimated that the true price of gasoline is over \$5.00 a gallon if you take into account the Persian Gulf activity. I imagine, if environmental cleanup were also considered, it would be much more than that.

I have copies of the studies mentioned above and would be pleased to make them available to you. Ethanol is a part of the solution to many things, including farm economy, energy security, and environment.

The Secretaries of the U.S. Department of Agriculture and the U.S. Department of Energy have recently announced department policy that requires the use of ethanol or ETBE (Ethyl tertiary butyl ether) an ethanol derivative, in their vehicles. I have enclosed a copy of the USDA press release.

I encourage you to join with them by requiring state vehicles to also use the fuel whenever possible .

Sincerely,

Shirley Ball
National WIFE Energy Chairman

Ex. 2

1-24-91

DB 109

NEWS

United States
Department of
Agriculture

Office of Press and Media Relations
News Division, Room 404-A
Washington, D.C. 20250

Office of
Public Affairs

Kelly Snipp (202) 447-4623

YEUTTER POLICY PROMOTES ETHANOL USE IN USDA VEHICLES

WASHINGTON, Sep. 13--Following President Bush's initiative to reduce America's dependency on foreign oil, Secretary of Agriculture Clayton Yeutter today announced a new departmental policy that requires employees to use ethanol or ETBE-blended gasoline in all U.S. Department of Agriculture-owned and leased vehicles when such fuels are available at prices comparable to regular unleaded gasoline.

"Using ethanol-blended gasoline in USDA cars and trucks is an opportunity to promote a 'win-win' situation," Yeutter said. "Ethanol is produced from American corn and other agricultural products, and that's good for American farmers. But it also helps reduce our dependency on foreign oil; and, as the president pointed out in his address to Congress Tuesday night, that's especially critical right now."

Gasolines blended with ethanol or ETBE (ethyl tertiary butyl ether) have been shown to reduce carbon monoxide emissions by as much as a third, depending on the vehicle make and model, and are a major component of the president's Clean Air initiative.

USDA operates a fleet of over 33,000 sedans, station wagons and light trucks in all 50 states. Though actual usage will be less because availability varies from state to state, if all of these vehicles were fueled with ethanol-blended gasoline, they would consume about 1.7 million gallons of ethanol per year, requiring 680,000 bushels of corn.

Noting that the use of ethanol and ETBE-blended gasoline has been approved by all automobile manufacturers, Yeutter went on to urge all USDA employees to use ethanol-based fuel in their personal vehicles.

"This is a great way for each of us, as individuals and as members of USDA, to demonstrate our commitment to America's farmers, America's environment and America's future," Yeutter said.

Northern Plains Resource Council

EXHIBIT NO. 3DATE 1-24-91BILL NO. SB 109

My name is Tom Breitbach and I live and farm northwest of Circle, Montana. I am also a member of McCone Agriculture Protective Organization and a member of Northern Plains Resource Council and am testifying in that capacity. I would like to thank this committee for the opportunity to testify on ~~the~~ Senate Bill 109.

I think it is good that the State of Montana makes a positive and definite statement regarding a state energy policy. Hopefully, if enough agricultural states do the same, a federal energy policy will be considered and approved. The federal energy policy is nonexistent and somewhat follows the thinking of the Federal farm bill. The support price of grains are frozen for the next five years and with the hostilities in the middle east, the costs of fuels has increased the overall costs of agriculture between 7 and 25%, depending on the specific style of production, with no increase in support prices. Bad farm policy will do more to create a "Buffalo Commons" in this state than anything else. This does not mean that I am satisfied with the present prices of agriculture production or programs, but rather ethanol production is a means of utilizing that farm production and increase prices.

There was a day-long meeting on the 16th of January in Helena to provide information on alternate fuel from agriculture and much information is available, and even though we do not have enough production of ethanol to provide all fuel used in Montana to be in the form of gasahol. According to the report of DNRC dated Sept. 13, 1990, there is enough ethanol production to make 30% of Montana's gas used to be gasahol, and production is increasing.

The processing of ethanol has not changed much in the last

number of years and it would be hoped that our grain production taxes and state supported colleges would research and develop new and better processes and technologies. Having built and operated a small still, which was certified by the Federal Government, I can identify some of these problems. Better strains of yeast, more heat efficient processes for converting the starches to sugars, faster or continuous fermentation of sugars to alcohol and more efficient distillation of the liquid mixture. We also need development of the solids into a predictable form for use in livestock and human feed use. These distillers products are actually a better feed for rumen type livestock than soybean or other high protein feeds.

I would support this legislation with ammendments that required use of gasohol as much as possible at the present time , and requiring use of gasohol in all state vehicles within a specified period, three or four years. Since all new programs are going to cost money, I think it is necessary absorb the additional cost. With new techniques, this fiscal cost could be lowered considerably.

Thank you for this opportunity.

SENATE JOURNAL
EXHIBIT NO. 4
DATE 1-24-91
BILL NO. SB109

MONTANA AUDUBON LEGISLATIVE FUND

Testimony on SB 109
Senate Highways Committee
January 24, 1991

My name is Linda Lee and I am testifying today on behalf of the Montana Audubon Legislative Fund. The Audubon is composed of nine chapters of the National Audubon Society and consists of 2500 members throughout the state.

We support SB 109 because it is time for Montana to begin using more alternative fuels.

The United State's dependence on petroleum has a long and interesting history. I would like to read you part of an article appearing in the Missoulian last month written by David Morris. It gave me a better understanding about why we don't use much alcohol for fuel. I hope it will help encourage you to vote to pass SB109 as one step toward decreasing our dependence on petroleum.

Article attached

ENVIRONMENTAL ALTERNATIVES

Stigma of alcohol, hemp lingers

DAVID MORRIS

Order Newspapers

Our puritanism always seems to get the better of our environmentalism. At least some way I read the last 100 years of American history. At crucial moments we've discouraged and even banned the use of environmentally good materials simply because they are also capable of giving us physical pleasure. And that has made all the difference. Consider the star-crossed couple of ethanol and hemp, better known to the reader as liquor and marijuana.

Ethanol should be our primary fuel and for one brief historical moment it might have been. By the 1800s, 30 million gallons of ethanol were sold for industrial uses, primarily as a solvent and for lighting. Alcohol was cheap, half the price of lard oil, a third the price of kerosene.

In 1861 Cincinnati alone processed 100,000 bushels of corn a day into ethanol. But that year two events occurred whose impact reverberates to this day. Edwin Drake discovered oil in Pennsylvania. Kerosene, the only viable petroleum product at the time, became a serious competitor in the lighting market. And Congress levied a \$2.08 tax on distilled spirits, making industrial alcohol, to pay for the Civil War. Kerosene paid only a 10-cent tax.

The liquor tax remained in place for 35 years, effectively halting the development of ethanol technologies.

In 1906, *The New York Times* editorialized, "It is only the heavy tax levied by the United States that has prevented the use of a large number of viable products for the

manufacturing of an exceedingly cheap and available alcohol." While ethanol languished on the sidelines, the internal combustion engine was born, the first airlines were laid, and the chemical engineering profession came of age.

The liquor tax was repealed in 1909. Ethanol advanced. Then in 1919 the industry received another devastating blow: Prohibition. Chemist William Hale, a leading proponent of ethanol, observed, "The Prohibition act set this country back 14 years



in organic technical progress." During this period lead, not ethanol, was added to gasoline to make it compatible with the new generation of higher powered cars. This occurred despite Yale Professor Wendell Henderson's prophecy that lead would become "the greatest single problem in the field of public health that has ever faced the American public."

Prohibition was repealed in 1933, yet it continued to taint ethanol's appeal. When Iowa and Nebraska introduced legislation to mandate the use of ethanol blends, the National Petroleum Association warned, "To force the use of alcohol in motor fuel would be to make every filling station and gasoline pump a potential speakeasy."

Today ethanol is making a comeback. It is by far the superior fuel. But because it can also make us drunk, ethanol must play catchup to a century of petroleum-driven development.

The history of hemp eerily echoes that of alcohol: Until the 20th century, 80 percent of humanity's textiles and fabrics were made from cannabis fibers. Hence the word "canvas." Hemp fiber is soft, durable, and the plant requires little fertilizer. Cotton replaced hemp after the invention of the cotton gin and it remains our primary natural fiber. But cotton is environmentally destructive. Half the world's pesticides are used to grow cotton. A cotton jacket "contains" the energy equivalent of a quart of oil.

Until 1883, 75-90 percent of the world's paper was made from hemp fibers, according to Jack Herer, in his remarkable book "The Emperor Wears No Clothes." In 1916 the Department of Agriculture invented a way to make paper from the hurds, or pulpy part of the hemp plant. An acre of hemp could produce four times as much pulp as an acre of trees. Making paper from hemp could use as little as 15 percent of the chemicals needed to make paper from trees.

In 1937 the equivalent of the cotton gin was invented for hemp. The machine could efficiently harvest hemp stalks and strip the outer hurds from the inner fiber. Popular Science predicted a billion-dollar hemp market. Alas, it was not to be. In 1937 prohibition was visited on marijuana.

Since 1937 about half the forests in the world have been cut down to make paper. With the world running short on paper, some entrepreneurs are taking another look at hemp. They maintain that hemp farms need not yield marijuana, citing cultivation practices and new strains developed in France and Russia.

So here we are. Fouling our atmosphere by burning million-year-old fossil fuels. Cutting down old growth forests to make this morning's newspaper. Why? Because the alternatives could make us feel too good.

David Morris, an author, lecturer and consultant, is a columnist for the St. Paul Pioneer Press.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE ORIGINATOR
EXHIBIT NO. 5
DATE 1-24-91
SB109

BILL # SB 109 ; TESTIMONY BY: Lorna Frank
DATE 1/24 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, Members of the Committee:

For the record, my name is Lorna Frank, and I speak today on the behalf of the Montana Farm Bureau. We have, for some time advocated promoting gasahol as a prudent use of a renewable resource. SB 109 is particularly relevant in these days of uncertain oil supplies and prices. Using a product produced by Montana's largest industry in State tax-supported vehicles is a concept long over-due, as long as gasahol prices are truly competitive.

We ask the Committee to give this bill a due-pass.

Thank you.

SIGNED: Lorna Frank

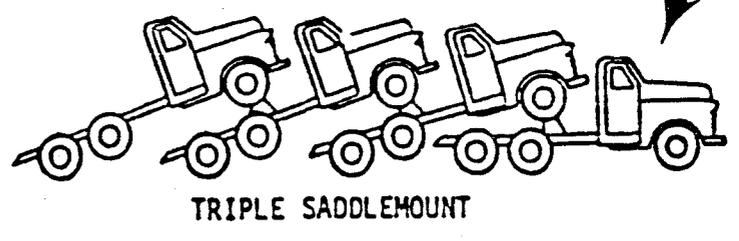
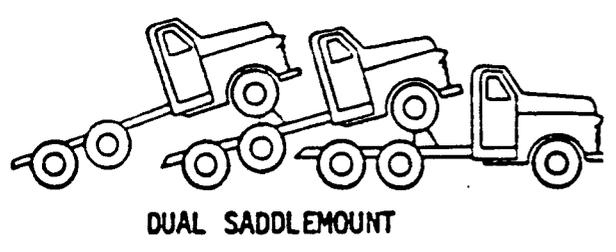
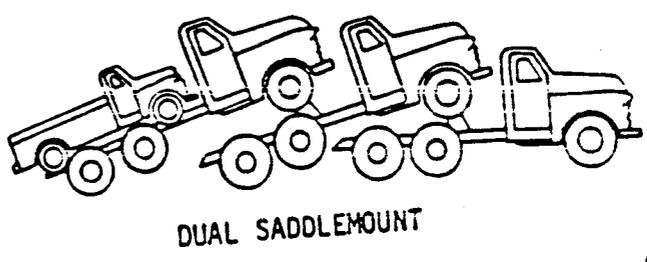
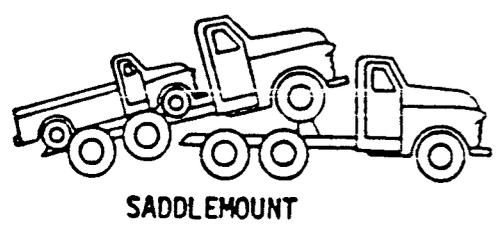
DATE: 1-24-91
BILL NO. SB-132

THE FOLLOWING ILLUSTRATIONS ARE LEGAL COMBINATIONS FOR USE IN THE DRIVE-AWAY DELIVERY OF VEHICLES:

Legal Width: 102"
Legal Height: 14'
Legal Length: 65'

When licensed with a Transit Plate, one plate must be on the front of the combination and one plate on the rear of the combination.

When licensed with a Temporary Trip Permit, a permit must be purchased for each vehicle in contact with the roadway.



Submitted by Dave GALT - GWU
Department of Highways
1/24/90

7
CLERK HARRIS
DATE 7
DATE 1-24-91
BILL NO. SB 101
PAGE NO.

Public Service Commission's Proposal
for Amendment to SB 101,

Amendment to SB 101, as introduced (white copy).

1. Page 2, line 1.
Following: "motor carrier"
Strike: ~~"pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof"~~
Insert: "pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof"

2. Page 2, line 6.
Following: "motor carrier"
Strike: ~~"pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof"~~
Insert: "pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof"

SENATE JOURNAL
EXHIBIT NO. 8
DATE 1-24-91
BILL NO. 5 B 101

SENATE BILL 101
TESTIMONY OF WAYNE BUDT
ADMINISTRATOR, TRANSPORTATION DIVISION
PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND, FOR CLARIFICATION, SPECIAL PROVISIONS APPLICABLE IN MOTOR CARRIER REGULATION WHEN CERTAIN FEDERAL OR STATE CONTRACTS ARE INVOLVED; AMENDING SECTION 69-12-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

This bill as proposed amends an existing statute to more clearly reflect requirements in the filing of federal and state transportation contracts with the Commission. It clearly states that the submission of a contract in itself is sufficient proof of public need in two instances only: 1) A U.S. Government contract for the transportation of persons and 2) A State of Montana contract for the transportation of garbage.

Transportation under U.S. Government contracts for commodities other than people is specifically exempt by Montana statute. Transportation under State of Montana contracts for commodities other than garbage requires a Certificate of Public Convenience and Necessity obtained after proper application, notice, and opportunity for public hearing.

The Montana Supreme Court recently upheld the above historical interpretation of the statute. They indicated, however, that the statute as it is presently written is confusing and they suggested the Commission propose clarifying legislation.

JAN 21 1991
9
1-24-91
SB 101

STATEMENT OF WATKINS AND SHEPARD TRUCKING

IN SUPPORT OF S.B. 101

submitted by

Stanley T. Kaleczyc
Attorney for Watkins and Shepard Trucking

Watkins and Shepard Trucking, Inc. supports S.B. 101 which was requested by the Montana Public Service Commission in response to a suggestion from the Montana Supreme Court in State ex rel. Roberts v. PSC and Watkins and Shepard Trucking that the Legislature be given the opportunity to clarify §69-12-324 MCA.

The central issue in this case was whether Montana's Motor Carrier Act created a specific statutory exception for all motor carriers with federal and state government contracts for the transportation of people and goods from the general regulatory framework of requiring a motor carrier to obtain a certificate of convenience and necessity from the PSC before the carrier could haul pursuant to the contract.

The position of the PSC and Watkins-Shepard was (and is) that the general regulatory framework of requiring an applicant for a permit to go through the PSC applies to all state contracts, except for the specific types of transportation hauls enumerated in §69-12-234 MCA. These explicit statutory exemptions from the contested case proceeding to obtain a PSC permit are: (1) federal contracts to haul passengers intrastate and (2) state contracts to haul solid waste for the state or a state agency. Other than these two categories of haul, PSC authority must be obtained in advance.

In the litigation which has resulted in S.B. 101, Roberts sought to obtain the OPI school lunch contract after representing to the PSC that it could obtain the necessary PSC authority. OPI granted the contract to Roberts on the condition that the authority was obtained by a date certain which was in sufficient time for OPI to be assured that it would have a reliable and dependable trucking firm to deliver school lunches throughout the State during the then-upcoming school year. When the PSC refused to issue authority to Roberts without Roberts going through the normal PSC hearing process to obtain the authority, Roberts sued the PSC.

Both the district court and the Supreme Court found that §69-12-324, as currently written, was confusing, although the PSC had consistently interpreted the exemption statute. We successfully demonstrated to the courts that the PSC's interpretation of the legislation was consistent with the legislative history of the law and that legislative amendments in prior years may have changed the

words, but never the intent, of the statute at issue. The Supreme Court concluded that, although in its present form the statute is poorly drafted, "it [the statute] does not create a blanket exemption from the public convenience and necessity hearing for all government contracted Class C carriers." The Court then went on to suggest "with some trepidation" that the Legislature redraft §69-12-324 to clarify its meaning. What is important to note is this: The Montana Supreme Court upheld the PSC and Watkins-Shepard interpretation of the statute. The Court implicitly found that the statute as interpreted is lawful, and only suggested that the language be clarified to avoid any ambiguity. Moreover, in ruling in favor of the PSC and Watkins-Shepard on another issue raised by Roberts, the Court stated:

We hold that award of a contract under the Montana Procurement Act does not in itself excuse the winning carrier from a public convenience and necessity hearing under the Motor Carrier Act.

Finally, although the Court found the current procedures and requirements to be lawful and constitutional (rejecting another argument raised by Roberts), the Court did note that it thought Roberts was "in a classic Catch-22 created by conflicting PSC and OPI requirements." The Court then invited the agencies "to consider their overlapping requirements and to tailor their procedures accordingly." Interestingly, the Court did not suggest that the Legislature rewrite the relationship between OPI and the PSC (or any other agencies) but that the agencies coordinate better between themselves.

What we are left with, then, are two suggestions from the Court: first, that the Legislature clarify but not change existing law; and, second, that the agencies coordinate better in allowing each sufficient time to fulfill their respective statutory obligations.

From our perspective, then, there are two points to be made: first, the Court did not require any drastic action by the Legislature and legislative tinkering with a workable system should therefore be discouraged; and, second, there are important policy reasons for not tinkering with a workable system. These policy reasons include, but are not limited to, the following:

1. PSC operating authority is a valuable commodity and should not be selectively and arbitrarily taken away by some type of blanket exemption from the Motor Carrier Act requirements of a public hearing. If authority is to be taken away, then as a constitutional matter and as an equitable matter, carriers with existing authority would need to be reimbursed for their loss.

2. Individual state agencies, like OPI, are not in a position to judge the ability of a carrier to serve the public. That is an area of expertise reserved to the PSC. The PSC has the competence and experience to determine who is qualified to serve the public. Moreover, the contested hearing process is the best means of eliciting testimony and evidence on the issues of who can best serve the public.

3. Price is at best only one very limited factor to consider in deciding who can best serve the public. Especially in the area of state contracts, the lowest price per se does not guarantee that the carrier can deliver the goods over the life of the contract. Low price can be indicative of a marginal operation and operator, or an inexperienced operator who will not be able to make an adequate profit to survive. In fact, the Montana Procurement Act requires that state contractors be both competent to perform and competitive in price.

In conclusion, Watkins and Shepard Trucking support the PSC's efforts to clarify existing law and thus supports S.B. 101. The bill is simple and straightforward and the Legislature should resist any efforts to expand the scope of a narrow exemption to the general proposition that the PSC should be allowed to fulfill its legislative mandate to evaluate the ability of trucking companies to serve the public.

10
1-24-91
SB 101

No. 89-492

IN THE SUPREME COURT OF THE STATE OF MONTANA

1990

STATE ex rel. H. R. ROBERTS and
ELIZABETH ROBERTS, d/b/a H. R.
ROBERTS & SONS, INC.,

Relators and Appellants,

vs.

PUBLIC SERVICE COMMISSION OF
THE STATE OF MONTANA,

Respondent and Respondent,

and

WATKINS AND SHEPARD TRUCKING, INC.,

Intervenor and Respondent.

APPEAL FROM: District Court of the First Judicial District,
In and for the County of Lewis and Clark,
The Honorable Jeffrey M. Sherlock, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

W. William Leaphart argued, Helena, Montana

For Respondents:

Robin McHugh argued, Helena, Montana

Stanley T. Kaleczyc argued, Helena, Montana

Submitted: March 13, 1990

Decided: April 13, 1990

Clerk

FILED
APR 13 1990
MONTANA

Chief Justice J. A. Turnage delivered the Opinion of the Court.

H. R. Roberts and Sons appeals from an order of the First Judicial District Court, Lewis and Clark County, denying the appellant's petition for declaratory judgment and writ of mandamus. We affirm.

ISSUES

1. Did the District Court err in holding that § 69-12-324(2), MCA, does not provide an exemption for all Class C carriers operating under government contracts?

2. Did the District Court err in not holding that the Montana Procurement Act preempts the Public Service Commission public convenience and necessity hearing requirement for the winner of a competitive bid, state contract?

3. Did the District Court err in holding that § 69-12-324, MCA, does not deny equal protection when it allows state contracted solid waste carriers to obtain certificates without a public convenience and necessity hearing while requiring state contracted commodities carriers to go through the hearing process?

FACTS AND PROCEDURE

Appellant H. R. Roberts and Sons [hereinafter Roberts] underbid intervenor Watkins & Shepard Trucking, Inc. [hereinafter Watkins], by \$150,000 on a statewide, three-year contract to haul United States Department of Agriculture surplus commodities for the Montana Office of Public Instruction [hereinafter OPI] school lunch

Ex. 10
1-24-91
SB 101

program. Watkins held the contract for the previous nine years and was the only carrier in Montana with the requisite USDA Commodities Class C certificate. Roberts held a Class C certificate, but under Public Service Commission [hereinafter PSC] procedure, could not obtain a USDA commodities endorsement until it had a commodities contract.

The OPI awarded Roberts the contract on June 16, 1989, on condition that Roberts obtain the USDA commodities endorsement by August 1. Roberts immediately applied to the PSC arguing that § 69-12-324, MCA, exempted all government contracted Class C carriers from the requirement of a public convenience and necessity hearing. The PSC refused to exempt Roberts. The agency interpreted § 69-12-324, MCA, as exempting only federally contracted passenger carriers and state contracted solid waste carriers. The PSC set a hearing for August 23--the earliest practical date under its notice and hearing regulations.

On July 14, Roberts filed the action now on appeal and Watkins intervened. Roberts asked the District Court to issue a writ of mandamus ordering the Public Service Commission to either issue the commodities endorsement without a hearing or to hold the hearing before the August 1 deadline. Roberts also requested a declaratory judgment that the exemption statute violated equal protection guarantees by giving preferential treatment to waste carriers over commodities carriers.

The District Court denied the writ of mandamus and entered declaratory judgment against Roberts. Following the August 1 deadline, the OPI rejected both Roberts' and Watkins' bids and, under the noncompetitive provisions of § 18-4-306, MCA, awarded the contract to Watkins as the sole source of contract services. Roberts now appeals the District Court's decisions.

HEARING EXEMPTION

Montana law requires the PSC to provide public notice and to hold a hearing on public convenience and necessity whenever a motor carrier applies for any class of certificate. Section 69-12-321, MCA. Section 69-12-324, MCA, grants exemptions from the hearing requirement. Roberts argues that the plain language of the exemption statute covers all Class C carriers operating under state or federal contracts. The PSC argues that the plain language of the statute exempts only federally contracted passenger carriers and state contracted solid waste carriers.

Subsections (1) and (2) of the statute read as follows:

(1) The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United

Ex. 10
1-24-91
5B 101

States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

Section 69-12-324, MCA.

The procedure for interpreting the statute is clear.

The judicial function in construing and applying statutes is to effect the intention of the legislature. In determining legislative intent, the Court looks first to the plain meaning of the words used in the statute. If intent cannot be determined from the content of the statute, we examine the legislative history.

Thiel v. Taurus Drilling Ltd. (1985), 218 Mont. 201, 205, 710 P.2d 33, 35.

The PSC asserts that the statute is plainly unambiguous. "[I]t is not necessary to resort to legislative history to interpret 69-12-324. The PSC has frankly been astounded by the statutory exegesis that the Roberts and the District Court have undertaken in an effort to grasp the meaning of a law that the PSC considers

plain on its face." We disagree with the PSC. Section 69-12-324, MCA, is so poorly written that its plain language appears to have no effect whatsoever. Subsections (1) and (2) speak of presenting "the" written contract without identifying the contract to which they refer. Subsections (1)(a) and (1)(b) define "transportation movement"--a term which cannot be found anywhere else in the Motor Carrier Act. Subsection (2) speaks of issuing a Class C certificate even though one of the two categories purportedly covered--solid waste carriers--is statutorily defined as a Class D carrier. Section 69-12-301(5), MCA. Like the District Court, we find it necessary to engage in some "statutory exegesis" to determine what the legislature intended.

The current confused nature of the exemption statute, and the present issue, appear to be the direct result of numerous amendments and procedural recodification of the exemption statute and related provisions of the Montana Motor Carrier Act. The Act originally defined Class C carriers as including all carriers operating under contract. Section 3847.2, RCM (1935). Section 3847.10, RCM (1935), required Class C carriers to apply for a certificate of convenience and necessity which could be issued only after a public hearing. The 1971 Legislature added a subsection to the statute, then codified at § 8-110, RCM (1947), exempting from the hearing requirement Class C carriers operating under United States government contracts to transport persons or

Ex. 10
1-24-91
SB 101

commodities. Act approved February 27, 1971, ch. 69, § 1, 1971 Mont. Laws 506, 508-09. The 1975 Legislature amended the new subsection extending the exemption to carriers operating under state contracts to haul solid waste. Act approved March 27, 1975, ch. 179, § 1, 1975 Mont. Laws, 315, 316. The 1977 Legislature amended the Act's classification system creating the D classification for waste carriers. Act approved March 25, 1977, ch. 138, § 1, 1977 Mont. Laws 466, 467. During the 1979 change from the Revised Codes of Montana to the Montana Code Annotated, the hearing exemptions were recodified in § 69-12-324, MCA. In 1983, the Legislative Audit Committee rewrote § 69-12-324, MCA, and other statutes as part of a Sunset Audit of the PSC statutes. Act approved April 19, 1983, ch. 588, § 15, 1983 Mont. Laws 1394, 1402.

All of this legislative tinkering has produced three underlying problems which obscure the meaning of the exemption statute. First, the enumeration of the current exemption statute gives the false impression of an exemption for all government contracted Class C carriers. The original exemption in § 8-110(2), RCM (1947), contained three unnumbered paragraphs. The first paragraph provided that the transportation of passengers or commodities under United States government contract was subject to all provisions of the Montana Motor Carriers Act except that presentation of such a contract was sufficient proof of convenience and necessity. The second paragraph provided that a certificate could be issued

without convening a hearing. The third paragraph provided the duration of the certificate and is not presently at issue. In the original exemption statute, the second and third paragraphs merely filled out the procedural details of the exemptions provided in the first paragraph.

During the 1979 general recodification, the three paragraphs were enumerated (1), (2), and (3). Roberts now contends that subsection (2) creates an exemption in addition to those set out in subsection (1). However, as Watkins argues, the supplementary function of subsection (2) is still apparent in the current version of the paragraph. Subsection (2) refers twice to "the . . . government contract." "The" refers to the contract originally described in subsection (1).

Second, subsection (2)'s reference to Class C carriers gives the impression that it creates an exemption in addition to those granted in the first paragraph. Roberts argues that because subsection (2) refers to Class C carriers, it creates an exemption separate from that extended to solid waste carriers who are statutorily defined as Class D carriers. The PSC argues that, when they transport under state contract, solid waste carriers change from Class D to Class C. Regardless of how the PSC categorizes them, under the plain language of the statutes, contracted solid waste carriers fall within both classes; Class C covers all

Ex. 10
1-24-91
5B 101

contract carriers, § 69-12-301(4), MCA, and Class D covers all solid waste carriers, § 69-12-301(5), MCA.

The exemption statute confuses the classifications. It has always referred only to Class C carriers. When the 1975 Legislature extended the exemption to state contracted solid waste carriers, they fell only under Class C. Section 8-102(a), RCM (1947). However, when the 1977 Legislature created the new D classification, it failed to provide a corresponding amendment to the exemption statute. Furthermore, when the 1977 Legislature created Class D, it passed a companion statute prohibiting Class A, B, and C carriers from hauling waste. Act approved March 25, 1977, ch. 138, § 2, 1977 Mont. Laws 466, 467. The result was an exemption statute which purported to exempt solid waste carriers but referred to them as Class C carriers--a classification that was statutorily prohibited from carrying solid waste.

The 1983 Sunset Audit of the PSC statutes produced an oblique reference to the exemptions statute which partially corrected the inconsistencies. It amended the prohibition against waste hauling by Classes A, B, and C to read:

Except as provided in [the exemption statute], no Class A, B, or C carrier will be authorized or permitted to transport . . . waste

Act approved April 19, 1983, ch. 588, § 16, 1983 Mont. Laws 1394, 1403 (emphasis indicates amendment). In spite of the plain

language of the classification statutes, the Audit Committee apparently assumed that Class D carriers become Class C carriers when operating under government contract.

Third, the Audit Committee also exacerbated the confusion by defining the term "transportation movement," in subsection (1) of the exemption statute. Prior to 1983, the statute provided that, with the exception of the hearing requirement, the transportation of passengers and commodities under United States government contract, and the transportation of solid waste under state government contract, "shall be deemed a transportation movement subject to the provisions of this chapter." Section 69-12-324(1), MCA (1981). The obvious purpose of the phrase was to ensure that, even though the carriers were exempted from the hearing requirement, they were still subject to all other provisions of the Montana Motor Carrier Act. In an apparent attempt to simplify the statute, the Audit Committee turned this phrase on its head. Act approved April 19, 1983, ch. 588, § 15, 1983 Mont. Laws 1394, 1402. It now reads, "Subject to the provisions of this section, a transportation movement is considered to be" Instead of making the designated contract carriers subject to the provisions of the Motor Carrier Act, it now defines "transportation movement" as including the designated contract carriers. The definition has no apparent purpose since "transportation movement" appears nowhere

Ex. 10
1-24-91
SB 101

else in the current or previous versions of the exemption statute, the Motor Carrier Act, or the administrative regulations.

The end product of these piece-meal amendments is a set of statutes which is, in various parts, inconsistent, contradictory, and superfluous. The meaning of the exemption statute is so obscure that Roberts can now make a plausible argument that it exempts from the hearing requirement all Class C contract carriers. The bottom line, however, is that the District Court was correct; there is no evidence that the legislature ever intended to create such an exemption. To the contrary, during the 1983 Sunset Audit, the PSC presented the legislature its uncontested interpretation of § 69-12-324, MCA, as exempting only federally contracted passenger carriers and state contracted solid waste carriers. Mont. Public Service Comm'n. Summary of the Legislative Audit Comm. Bill: S.B. 436, at 4, House Admin. Comm., March 14, 1983; Mont. Public Service Comm'n. Statement in Support of S.B. 436, exhibit no. 4, Senate Business and Industry Comm., February 19, 1983.

We hold that whatever § 69-12-324, MCA, does, it does not create a blanket exemption from the public convenience and necessity hearing for all government contracted Class C carriers.

We invite, with some trepidation, the legislature to again consider the Motor Carrier Act. Carriers such as Roberts should be able to determine their rights and responsibilities by reading

the plain language of the statutes. Presently that is not the case.

PREEMPTION

The Montana Procurement Act [hereinafter MPA] and the PSC's public convenience and necessity hearing serve distinct purposes. The MPA requires state agencies to purchase most supplies and services through a competitive bid procedure. Section 18-4-302(1), MCA. The MPA is intended, among other things, to promote free enterprise competition. Section 18-4-122(7), MCA. In the PSC's public convenience and necessity hearing, on the other hand, competition is not a factor. Section 69-12-323(2)(a), MCA, requires the PSC to address three issues before granting additional operating authority.

a) First, the Commission must determine that "public convenience and necessity require the authorization of the service proposed." This necessarily will include consideration of the existing service.

b) Second, the Commission must consider the ability and dependability of the applicant to meet any perceived additional public need.

c) Third, the Commission must consider the impact that the proposed service would have upon existing transportation services.

In re Application of Sullivan (Dep't. of Public Service Regulation, July 2, 1985), Docket No. T-8752, Order No. 5388, at 5. Roberts argues that because the MPA promotes competition whereas the PSC

Ex. 10
1-24-91
5B 101

protects the existing carrier, the MPA preempts the PSC's hearing requirement.

We disagree with Roberts. Having a contract to operate is not equivalent to having a license to operate. The competitive policy of the MPA and public convenience and necessity hearing are complementary. The MPA ensures that the carrier will provide the services at the lowest reasonable price while the PSC hearing ensures that the carrier is capable of performing the contract and that a new carrier is in the public's best interests. To be awarded an MPA contract, the bidder must be a "responsible bidder," with "the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance." Sections 18-4-301(7) and -303(6), MCA. By awarding the contract to Roberts subject to issuance of a Class C commodities endorsement, the OPI implicitly recognized that Roberts had not yet demonstrated its ability to perform and its desirability as a replacement carrier. Furthermore, as the more specific statutes, the Motor Carrier Act governs over the MPA in the regulation of motor carriers. See § 1-2-102, MCA.

We hold that award of a contract under the Montana Procurement Act does not in itself excuse the winning carrier from a public convenience and necessity hearing under the Motor Carrier Act.

EQUAL PROTECTION

Roberts argues that by exempting state contracted solid waste carriers but not state contracted commodities carriers from the PSC hearing requirement, § 69-12-324, MCA, violates its right to equal protection. In *State v. Jack*, this Court identified three issues that must be considered in determining whether a statute violates the right to equal protection:

- (1) whether the statute is a legitimate and proper exercise of governmental authority;
- (2) the basis of the classification and an identification of the persons covered thereunder;
- and (3) the proper standard of review or scope of judicial inquiry regarding the relationship between the classification and the objectives of the law.

Jack (1975), 167 Mont. 456, 459, 539 P.2d 726, 728. Roberts does not contend that the regulation of motor carriers is not a legitimate exercise of state authority.

The parties do disagree on the basis of the classification. The PSC argues persuasively, and the District Court agreed, that the legislature has very good reasons for regulating contract carriers in a distinct manner from common carriers. We agree with Roberts, however, that that classification is not at issue in the present case. Here, § 69-12-324, MCA, distinguishes between different contract carriers. Specifically, the statute grants an exemption to state contracted solid waste carriers while denying an exemption to state contracted commodities carriers.

The third issue is whether this classification has a rational basis. See Jack, 167 Mont. at 461, 539 P.2d at 729. We hold that it does. Unlike commodities carriers, solid waste carriers are subject to oversight by the Department of Health and Environmental Sciences. The legislature gave that Department broad authority to establish and administer waste disposal systems, § 75-10-104, MCA, including regulation of solid waste transportation, § 75-10-204(3), MCA. The Department has established minimal standards for solid waste transportation, see § 16.14.523, ARM, and has the authority to inspect carriers, § 16.14.525, ARM, and to enforce compliance, § 16.14.526, ARM. When a contract to haul solid waste is issued, the public's need for a new carrier and the carrier's ability to perform in compliance with the Department's regulations should already have been determined.

The OPI has the authority to enter contracts for the distribution of commodities and, theoretically, to regulate and oversee their performance. Sections 20-10-201(3)(a), and -203, MCA. Issuing transportation contracts, however, is a small adjunct to the OPI's primary function of providing educational services. The OPI is not an agency expected to oversee motor carriers.

We hold that the difference between the agencies' abilities to evaluate and regulate transportation companies provides a reasonable basis for granting an exemption to state contracted solid waste carriers and not to state contracted commodities

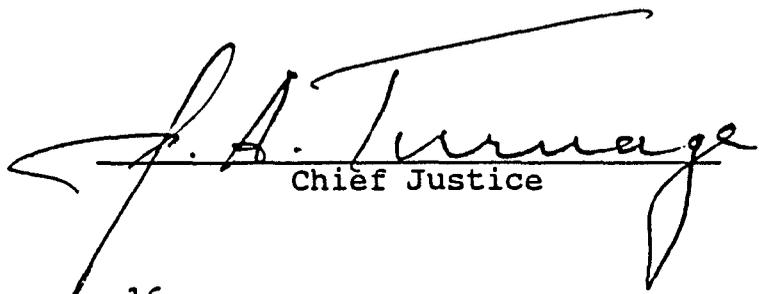
carriers. The disparate treatment does not violate Roberts's right to equal protection.

CONCLUSION

Roberts has been caught in a classic Catch-22 created by conflicting PSC and OPI requirements. PSC procedures prevented Roberts from obtaining a commodities endorsement until it had a contract. OPI requirements made the contract conditional on Roberts securing the endorsement by August 1--a deadline PSC procedures made impossible. In this situation, Roberts could never replace the existing carrier regardless of how capable or cost effective a carrier it might be.

The solution, however, is not for this Court to rewrite the regulatory legislation as Roberts suggests. The solution is for the agencies to consider their overlapping requirements and to tailor their procedures accordingly. The OPI could have taken bids on their commodities contract at an earlier date. The PSC could have initiated its notice and hearing procedure when Roberts entered a bona fide bid. The agencies' lack of foresight and flexibility may have harmed the appellant and cost taxpayers an extra \$150,000 by effectively nullifying Roberts's low bid.

Affirmed.


Chief Justice

Ex. 10
1-24-91
5B 101

We concur:

William E. Henth

John G. B...

P. C. ...

[Signature]

Justices

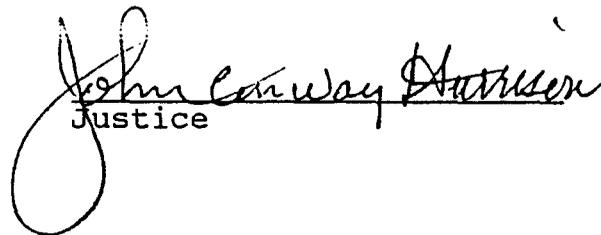
L. C. Gulbrandson

Hon. L. C. Gulbrandson, Retired
Justice, sitting in place of
Justice John C. Sheehy

Justice John Conway Harrison, specially concurring.

While I concur with the majority opinion in this case, I find the result appalling to appellant Roberts. He found himself in a "Catch-22" situation, caught between two departments of State government whose internal regulations prevented him from getting the bid to which he was entitled. Had the Office of Public Instruction possessed the foresight to check with the Public Service Commission, Roberts would have been able to meet the time specifications.

As noted in the opinion, this is caused by the piecemeal amendments of our statutes which are, in various parts, inconsistent, contradictory and superfluous. In this opinion we ask that the legislature again try to correct such a holding as this by amending the Motor Carrier Act so that carriers such as Roberts can determine their rights and responsibilities, and at the same time bring some relief to the taxpayers who face the additional costs resulting from the holding in this case.


Justice

COMMITTEE ON: HIGHWAYS AND TRANSPORTATION

DATE: January 24-1991

VISITOR'S REGISTER

NAME	REPRESENTING	BILL #	SUPPORT	OPPOS
Larry Budt	MPS C	SB101	✓	
Bob Stehan	Alcotech	SB109	✓	
Jim Jensen	MEIC	SB109	✓	
Dave Sait	MDOH	SB132	✓	
Bill Strizich	Dept. of Highways	SB109		✓
Bob Stephens	Mt. Zion Lutheran	SB109	✓	
STAN KALECZYK	WATKINS • SHEPARD TRUCKS	SB101	✓	
Kay Norenberg	Wife	SB109	✓	
Tom Brethorn	NPBC-MAPO	SB109	✓	
Steve Visic	Vesican Petroleum	SB109		
Joe Roberts	H.R. Roberts T Gen	SB10T		
Robin McHugh	MPS C	SB101		
Den Hurdahl	MT Motor Carriers	SB101	✓	
" "	" " "	SB132	✓	
Lorna Frank	Farm Bureau	SB109	✓	
Francis Fehrnke	Self	✓	✓	

(PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 24 day of January, 1991.

Name: DAVID GALT

Address: 2701 Prospect Av. Helena

Telephone Number: 444-6130

Representing whom?

Department of Highways - GVW Division

Appearing on which proposal?

SB-132

Do you: Support? Amend? Oppose?

Comments:

I am submitting a diagram to help
explain triple saddle mount vehicles