

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chair, on February 2, 1993, at 1:02 p.m.

ROLL CALL

Members Present:

Sen. Cecil Weeding, Chair (D)
Sen. Betty Bruski-Maus, Vice Chair (D)
Sen. John Harp (R)
Sen. Francis Koehnke (D)
Sen. Doc Rea (D)
Sen. Spook Stang (D)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)

Members Excused: Sen. Toews

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Council
Beth Satre, Committee Secretary

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

Committee Business Summary:

Hearing: HB 170, SB 255
Executive Action: SB 105, SB 219, SB 198

HEARING ON HOUSE BILL 170

Opening Statement by Sponsor:

Rep. Bob Gilbert, House District 22, stated HB 170 would alter the makeup of the Montana Board of Aeronautics. According to **Rep. Gilbert**, HB 170 originally added a member to the Board. Since an extra member would have had a fiscal impact of approximately \$1866 per year, however, the House Business Committee decided to replace a current member. HB 170 was amended to remove the member of the general public and replace it with a member of the Montana Aerial Applicator Association (MAAA). **Rep. Gilbert** stated the testimony on HB 170 indicated the member representing the general public had a poor attendance record. He told the Committee this poor attendance has been a historical factor; no public member who both had an interest in

aviation and could contribute to the meetings had ever been named to the Board.

Rep. Gilbert stated the request to have a member of the MAAA on the Board of Aeronautics is a reasonable and good one. Aerial applicators service the agriculture industry and almost every airport in the State of Montana has an aerial applicator on it. He said aerial applicators are very important to that sector and very important to the State.

In **Rep. Gilbert's** opinion the new "subtitle E" regulations coming from the Environmental Protection Agency (EPA) make it imperative for aerial applicators to be on top of the issues at all times. He said those rules affect their day-to-day business habits. He stated he could think of no better place for aerial applicators to be than on the Board of Aeronautics to be continually informed of the issues.

After **Rep. Gilbert** had finished his opening comments, two pieces of information related to the Board of Aeronautics and the MAAA were circulated among the committee members (Exhibits #1 and #2).

Proponents' Testimony:

Bill Sheets, President of MAAA and Owner/operator of Big Sandy Flying Service, stated between 95-100 application businesses operate in Montana. Most are either based in airports or use airport facilities to service the agriculture industry at various times. He told the Committee in the past two or three decades while air-carrier operations and general aviation operations in general have been diminishing, the air application industry has managed to dramatically increase its production, efficiency and professionalism. According to **Mr. Sheets** when the Board of Aeronautics was established the role of aerial application was not clearly defined, and no one had envisioned the regulatory processes aerial applicators currently face. **Mr. Sheets** believes this is why aerial applicators were not initially included on the Board of Aeronautics. He expressed MAAA's support of HB 170.

Mr. Sheets reminded the Committee the EPA has mandated that all states should promulgate and implement regulations for containment, storage, loading and mixing at application sites within four years. He stated the Department of Agriculture is the state agency primarily responsible for carrying out this federal mandate, and the MCAA has been an integral part of the process to dealing with the efficacy and scope of these rules. He stated with a member on the Board of Aeronautics, the MAAA would be able to provide valuable input and expertise concerning the cooperation and compliance with these rules.

David Owen, Montana Chamber of Commerce, stated the support of his organization for SB 170.

Mike Ferguson, Administrator of the Aeronautics Division, Department of Transportation (DOT), expressed DOT's support of HB

170. He said the member-at-large seat was put on the Board of Aeronautics a few years ago when the airport managers successfully lobbied to also have a seat on the board. The airport managers' seat would have given the Board an even number of members, so the legislative committee added a member-at-large seat to reestablish the odd number of members. **Mr. Ferguson** stated he was not aware of any statute which would require an odd number of members on the Board of Aeronautics.

Questions From Committee Members and Responses:

SEN. MCCLERNAN asked what the duties of the Board of Aeronautics were. **Rep. Gilbert** replied the Board of Aeronautics is a quasi-judicial board which advises the DOT Aeronautics Division in issues involving flying. He stated the Board's job is to oversee what goes on in general aviation in the State of Montana. It administers pilot registration, is involved in airplane registration stickers, maintains the beacons, inspects federal airports, runs the airport in West Yellowstone and maintains some of the smaller state-owned airports of which there are several around the state. He concluded by saying the Board of Aeronautics is an active board and aeronautics is an active industry.

Closing by Sponsor:

Rep. Gilbert stated he needed to mention that although HB 170 passed by a large margin, concern was expressed in the House that removing the member of the general public might be harmful. He stated some legislators suggested the public member be put back on the Board and the Chamber of Commerce's seat be replaced in its stead. Although he was willing to leave that to the Committee's discretion, **Rep. Gilbert** expressed his concern with this idea. He stated the Chamber of Commerce has consistently named members that actively participate to the Board; for example, the last person representing them is the past Chairman of the Board of Aeronautics. **Rep. Gilbert** cautioned the Committee that there has never been good participation from the members of the general public.

Rep. Gilbert closed by stating **CHAIRMAN WEEDING** flies an airplane, his son is an aerial applicator, and understands our concerns. He requested **CHAIRMAN WEEDING** carry HB 170 on the Senate floor.

HEARING ON SENATE BILL 255

Opening Statement by Sponsor:

SEN. SWYSGOOD, Senate District 37, explained SB 255 was an attempt to close a loophole in the existing law which allows the transportation of livestock by *bona fide* farmers and ranchers in their own vehicles. He stated he had tried to address concerns addressed by both the agriculture and transportation communities. He said he was not sure everyone was completely satisfied, but thought SB 255 was a "good faith attempt" to rectify a situation that makes it difficult for regulated carriers who are required

to fulfil certain criteria for hauling livestock to compete with those who are not.

Mr. Swysgood informed the Committee that *bona fide* farmers or ranchers are per definition those who make less than 51% of their income as a trucker; they make at least 51% of their income in the farming or ranching business. He stated SB 255 takes the existing law's loophole into account by allowing *bona fide* farmers and ranchers to be "grandfathered". Section 2 of SB 255 makes the allowance that any *bona fide* farmer or rancher engaged in the business of transporting livestock for hire can report to the Public Service Commission (PSC) anytime between May 1, 1993 and May 1, 1994. If they prove they haul livestock the PSC must grant them a Class B Motor Carrier Authority during this period of time.

SEN. SWYSGOOD stated SB 255 also addresses situations where people who qualify do not want a Class B Motor Carrier Authority, but want to continue to help their neighbors. SB 255 would allow *bona fide* farmers or ranchers to haul for others when the remuneration for that transportation is limited to service for service to exchange, for reimbursement of fuel expenses, or both. With these two options, **Sen. Swysgood** stated SB 255 tries to take the two most common cases into consideration; if farmers and ranchers want to be paid to haul livestock, they can file for a Class B Authority; if they want to help their neighbors, they still can.

SEN. SWYSGOOD told the Committee some people were concerned SB 255 would mean total regulation. He stated this concern was unfounded; straight trucks with beds under 20 feet in length are exempt from regulation and farmers and ranchers can still use their vehicles and haul their own livestock. According to him, SB 255 would make it mandatory for people who want pay for hauling livestock to be regulated. He reiterated farmers and ranchers can haul livestock with remuneration of service to service and/or fuel expenses. He closed by reading a letter from a rancher who supported SB 255. (Exhibit #3).

Proponents' Testimony:

Ben Havdahl, Montana Motor Carriers Association (MMCA) read from prepared testimony (Exhibit #4) and passed out a rate sheet (Exhibit #4a).

Wayne Budt, Administrator of the Transportation Division, PSC, read from prepared testimony (Exhibit #5).

Candace Torgerson stated she was supplying testimony on behalf of the Montana Stockgrowers and the Montana Woolgrowers Associations. She read from prepared testimony (Exhibit #6).

Opponents' Testimony:

Leonard Lundby, a Farmer/Rancher from Great Falls, said he has a truck and does haul livestock. He told the Committee when he first heard about SB 255, he had thought he would be out of the hauling business. He applauded **SEN. SWYSGOOD** for the grandfather clause which will allow him to get a permit and stay in business, but expressed his continued opposition to SB 255. According to **Mr. Lundby**, the majority of the loads he hauls are loads that regulated carriers do not want; in fact, regulated carriers pass loads on to him because of the adverse road and weather conditions. **Mr. Lundby** described some of the conditions under which he has hauled loads. He stated none of the PSC regulations address these conditions and that is the reason regulated carriers do not want these loads. Haulers are required by law to charge MRC rates, and it is impossible to haul some of these loads for the fees established by the tariff bureaus.

Mr. Lundby emphasized the fact that he never undercuts Motor Regulated Carrier (MRC) rates; frequently he has to charge more to haul the kinds of loads he does. He stated it was never his intent to put any regulated carrier out of business; he started hauling livestock because people could not find regulated carriers willing to move their cattle. He stated with the regulation SB 255 would institute, the people for whom he currently hauls would go without. According to **Mr. Lundby** spring and fall are very busy times and the regulated carriers are so busy the demand cannot presently be met.

Mr. Lundby stated he did not believe non-regulated carriers could by-pass safety regulations. He reminded the Committee that farmers are not exempt from inspection, out-of-service violations and Gross Vehicle Weight (GVW) inspections. He stated he would "grandfather" under the MRC, but his preference is that he not be forced to have an MRC permit. He believes farmers and ranchers on the whole do not want to be subject to more regulation.

George H. Pearson, from Fairfield, stated he has both a production and a service business. He produces beef cattle and dairy heifers, Barley for Anheiser Busch, and hay. He also transports cattle as a service for his neighbors and for other people. He informed the Committee cattle in Montana are not hauled under a 16% farm and ranch GVW, but a 75% GVW.

He stated he values two things above all: 1. Life itself; 2. Freedom. He said he "spent a couple of years defending that freedom" and when he returned to the U.S. he expected to have a certain freedom to do business. He believes this freedom is constantly being infringed upon by increasing regulation. **Mr. Pearson** then quoted Winston Churchill: "You can take a perfectly good law, you can have rules and regulations on it to a point where you bring disrespect to it". **Mr. Pearson** referred to the "many good people [in Montana], who want to grant service to their neighbors and do a good job of it", and urged the Committee not to pass SB 255 so these people can continue to do provide

that service. He agreed with **Mr. Lundby** that many regulated carriers will not accept the hauling jobs he takes because the jobs are tough and cattle are sensitive. **Mr. Pearson** stated he works hard to do an effective job and perform a service for those people who employ him.

He told the Committee the concept of service is abstract and many people never understand it. "It is something you have to want to do. Sometimes you have to go out of your way" to provide service. In **Mr. Pearson's** opinion too many people "want to rule" and they end up curtailing the ability of others to provide needed services. He stated the farmers and ranchers do not need more regulation; they are already facing increasing federal regulations and they "are tired of it". **Mr. Pearson** believes most people will deal fairly without regulations if allowed.

Questions From Committee Members and Responses:

SEN. TVEIT asked **Candace Torgerson** if concern over SB 255's potential effect on availability of service was expressed by ranchers and farmers at the last Stockgrowers convention. **Candace Torgerson** replied she was not able to attend the convention. She thought some members were a little concerned, but told **SEN. TVEIT** her bosses would have specifically informed her had there been a great "ado" about SB 255.

SEN. TVEIT asked if SB 255's "grandfather" clause would allow *bona fide* farmers and ranchers to obtain a permit without going through any part of the normal application process. After May 1, 1994 anyone without a permit would have to go through that process. **Wayne Budt** replied **SEN. TVEIT** was correct.

SEN. REA requested **Wayne Budt** give the Committee general background on the Class B Authority: Its costs, application process and restrictions. **Wayne Budt** stated the Class B Authority is called a "common carrier or regular route authority" and is just a general term. It would cover any kind of commodity hauled along regular routes like cement, gasoline, livestock etc. **Wayne Budt** stated the application fee is graduated according to the number of counties included in that Authority. He thought a statewide application costs approximately \$300. He explained an application for a Class B Authority is noticed like any other type of authority, and those people who currently possess the authority have the right to protest. If the application is protested, it goes to hearing and need and fitness have to be shown.

SEN. REA asked if the PSC regulates the fees that can be charged under this authority. **Wayne Budt** replied there is a tariff rate set by Class B carriers. He stated the MMCA runs a tariff bureau carriers may join, but carriers can file their own schedule of rates with the PSC at whatever level they can justify. **Mr. Budt** said once these rates are filed the carrier has to charge them until the PSC grants them permission to either raise or lower them.

SEN. REA asked if carriers can undercharge. **Wayne Budt** replied no. The rates are exact. **SEN. REA** asked **Wayne Budt** to clarify what he meant when he stated individual carriers could file their own rates. **Wayne Budt** explained individual carriers can file their own tariffs at different rates than other commercial carriers might have. He stated different commercial carriers might have different rates, but whatever they file with the PSC is what they have to charge.

SEN. KOEHNKE asked **SEN. SWYSGOOD** what prompted him to request and to sponsor SB 255. **SEN. SWYSGOOD** stated he received numerous complaints from both regulated and non-regulated carriers: Regulated carriers who feel they are being forced to compete on an "unfair and unlevel playing field", and non-regulated carriers tired of being stopped, harassed and forced to prove they are *bona fide* farmers or ranchers with the authority to haul livestock. He stated he did not put the regulations on the book; it has already been determined that the livestock industry in Montana will be regulated, and the current exclusion in that regulation is contradictory, unfair and often a nuisance. **SEN. SWYSGOOD** informed the Committee and those attending the hearing that he was a regulated livestock carrier. He stated he was also an exempt carrier because he hauls hay and grain. He said the transportation of livestock over the state line is also an unregulated authority.

SEN. STANG asked if he had correctly understood that regulated carriers cannot charge more than the published rate unless they resubmit new terms. **Wayne Budt** replied **SEN. STANG** was correct, and carriers would need to justify any rate increase.

SEN. TVEIT asked **Wayne Budt** to verify that carriers can apply for a rate and operate at that rate. When they submit a new rate they need to go before the PSC or go through a public hearing to see if the PSC considers that rate change justified. **Wayne Budt** replied **SEN. TVEIT** was "basically" correct. He stated the carriers grandfathered under SB 255 would have an option. They could either join the existing tariff or file their own tariff. The initial tariff they would file would be what they feel they need to operate. **Wayne Budt** stated the PSC would approve that tariff unless it was completely out-of-line. After that point in time, however, if carriers want to raise or lower those rates they would have to come to the PSC and get permission.

SEN. TVEIT asked if farmers and ranchers can grandfather and come up with a rate that is somewhat higher than this rate and be legal. **Wayne Budt** responded they could on the initial file if they wanted to. **SEN. TVEIT** asked how long that period would last. **Wayne Budt** stated those rates would remain in effect until the carrier made the decision to either raise or lower them. **SEN. TVEIT** stated those rates do not fluctuate. **Wayne Budt** replied yes. Those would be the rates they would charge to haul until the carrier got permission to change them.

SEN. TVEIT asked **Dave Galt** to clarify **Mr. Pearson's** comment that hauling livestock requires a 75% GVW instead of the 16% GVW for farmers. **Dave Galt** replied this area is probably one of the most difficult in GVW fees and regulation. He explained if farmers or ranchers are in the business of hauling livestock their GVW fees are 75%, but if they haul only their own livestock their GVW fees are 16%. He told the Committee the 16% GVW class contains a provision allowing farmers and ranchers to trade labor with their neighbors. He stated when they charge a fee for hauling they are subject to the 75% GVW fee.

CHAIRMAN WEEDING asked if regulated carriers carrying only livestock pay 75% of the GVW fee. **Dave Galt** replied yes.

SEN. KOEHNKE asked **SEN. SWYSGOOD** to clarify the term "service for service". **SEN. SWYSGOOD** replied labor could be traded for labor and fuel costs could be reimbursed. **SEN. KOEHNKE** asked if the definition specified only like kinds of labor could be traded; if, for example, a farmer who had no livestock could trade for something else. **SEN. SWYSGOOD** answered he would assume under the definitions of SB 255 if farmers did not have livestock they would not be using a carrier.

In light of the information that they could initially set their own rates, **SEN. REA** asked **Mr. Pearson** and **Mr. Lundby** if SB 255 contained anything else "distasteful" to them, besides the fact it would force them to be regulated.

Mr. Pearson stated he did not believe the freedom of individuals to make their own business choices ought to be interfered with. Until now farmers and ranchers have been free to haul cattle and move about for the most part. He expressed his objection to the idea of regulation because he does not see the need; he feels the current system is working well. Although some of the current rates (Exhibit #4a) are too low, **Mr. Pearson** said he did not disagree with them; he uses them to establish his own rates. He informed the Committee he primarily hauls livestock during the fall and spring of the year when cattle are being moved to pasture and to market.

SEN. REA asked **Mr. Lundby** to comment. **Leonard Lundby** said the idea of being able to submit his own tariffs and raise rates to cover his costs was attractive. He stated it would be even nicer if all his jobs fit into "nice neat little pigeon hole categories, but they do not". He told the Committee some of his jobs are horrendous, but not all are. He stated it did not make sense to charge a farmer or rancher whose corrals are in shape and has a decent haul road exorbitant rates. He expressed the opinion that he needed the freedom and flexibility to determine how much to charge individual people for individual jobs.

SEN. KOEHNKE asked **Mr. Pearson** if he could live with the possibility of service for service should SB 255 pass. **Mr. Pearson** replied because of many variables, a dollar exchange is more workable. Fuel, for example, is a taxed commodity and also

has to be stored. He then spoke to the Committee about insurance stating he carried the same type of commercial insurance as commercial carriers do. That insurance covers major catastrophes, but does not generally cover individual head on that truck. According to **Mr. Pearson**, if an animal dies on the truck, the responsibility is the carrier's. He stated he has reimbursed cattle owners because he accepts the responsibilities and the risks inherent to hauling a load of cattle.

SEN. HARP referred to the valid questions raised about the difficulty of meeting the demand for livestock haulers during peak periods and the inability to neatly package the costs involved in hauling livestock. He asked **SEN. SWYSGOOD** to respond. **SEN. SWYSGOOD** agreed hauling livestock was not a neat packagable business. He stated he has hauled some difficult jobs where his fee did not cover his costs, and he agreed it was probably true there were some regulated carriers who would not haul certain jobs. He stated, however, SB 255 would not change that situation. According to **SEN. SWYSGOOD** an authority requires carriers to provide service if they have equipment available, and if a carrier is in flagrant violation, farmers and ranchers only need to call the PSC to have them investigate why a carrier is not providing service.

SEN. SWYSGOOD stated he performs the same type of service, belongs to the tariff bureau and is bound to their rate sheet (Exhibit #4a). He stated he opted not to file his own tariff, because adjusting rates for fuel price fluctuations and other costs is a timely process. Using the rate sheet (Exhibit #4a), he outlined an example of a haul and the fee he would charge. He stated **Mr. Lundby** has a higher rate for adverse conditions and could still charge that rate under SB 255; he can structure his rates so he can apply a different percentage to those rates for adverse conditions.

SEN. SWYSGOOD addressed the availability of equipment. He stated There was not enough trucks in the entire State to cover the amount of cattle that move in the spring and fall. He said SB 255 would neither eliminate any trucks currently hauling livestock nor put anymore in place. He stated SB 255 would only force farmers and ranchers to make a decision. If they were going to continue to haul livestock for others they would have to be regulated unless they hauled only service for service. He reiterated he had not helped establish the current regulation. He and other regulated carriers are forced to compete and would like to know what they are competing against so they could adjust their rates accordingly.

SEN. HARP asked **Wayne Budt** to respond. **Wayne Budt** stated the tough roads are not unique to hauling livestock. Carriers of other commodities like gasoline or petroleum also haul over tough roads. He told the Committee those tariffs contain a provision for "impractical operations" which allows an additional charge, usually per mile, for operations over adverse conditions. He

explained the tariff is not necessarily set higher across the board; the extra charge is applied when the operations take place. Mr. Budt stated if the livestock tariff bureau wants to, they can submit that to the PSC which approves such things routinely. He explained it is not a matter of a carrier's rates being set high enough to anticipate the costs of future "impractical operations", it is a matter of figuring out what those impractical operations actually cost and getting permission from the PSC to charge an extra fee when a carrier incurs them.

CHAIRMAN WEEDING asked if the rate-sheet (Exhibit #4a) included a schedule to make those kinds of adjustments.

SEN. SWYSGOOD replied the rate-sheet (Exhibit #4a) was just a flat mileage sheet. He stated another part of the tariff has all the other components that allow carriers to charge for things like gravel roads usually per mile. He admitted he does not charge those extra fees because nobody in his area will pay them. He told the Committee it was available, and he probably should be doing it, but since nobody else does, he does not.

SEN. REA asked how the rates are adjusted for unseen things like a ten cent jump in fuel costs. **SEN. SWYSGOOD** stated such cost increases are addressed through periodic reviews of the tariff. In the event that fuel costs jump drastically, emergency surcharges are available. He told the Committee his tariff bureau just turned down a 5% increase because the members did not feel it was appropriate for the ranchers and farmers raising cattle at this time. He defined a surcharge fee as the basic rate plus a two or three cent addition to cover the added cost incurred for fuel or other things. **SEN. SWYSGOOD** stated he was not sure surcharges would be used a great deal for livestock hauling given its periodic nature, but emphasized surcharges and periodic rate reviews are possible under regulation.

SEN. KOEHNKE commented carriers would need to have enough mileage on good roads to cover the bad hauls on poor roads or they would be out of business.

SEN. SWYSGOOD stated the longer and the further regulated carriers haul cattle the more money they get paid. Those longer hauls are also usually on better roads. He stated it is the short hauls between the 1-50 mile rate where carriers "take it pretty dear" if they do not stay on "fairly decent" roads. He stated gravel roads are the most costly to haul on, and he ventured the guess that many regulated carriers refuse livestock hauling jobs for precisely that reason. He emphasized SB 255 would not change this situation.

SEN. TVEIT asked what **SEN. SWYSGOOD'S** GVW rates were. **SEN. SWYSGOOD** replied he pays 100% GVWs on all of his equipment because of the nature of his business. He interchanges his equipment and it would not be feasible to reserve one truck for livestock only to be able to pay 75% GVW fees on it. He informed

the Committee the difference between 100% GVW and 75% GVW was not all that great. He said, however, there is a great deal of difference between 100% GVW or 75% GVW and a 16% GVW. He stated in his area some people haul with a truck that operates and is under a ranch license.

SEN. REA asked **Wayne Budt** if rates were ever decreased. **Wayne Budt** replied yes. **SEN. REA** stated he asked that question because in his profession as a veterinarian they cannot set prices. If they do set a fee for a procedure they are price-fixing. He asked **Wayne Budt** to clarify the difference. **Wayne Budt** replied the tariff bureaus, that actually publish the tariff, are exempted from anti-trust laws through approval from the PSC. He stated the U.S. Department of Justice has determined the PSC has this authority if the tariff bureau meets certain requirements, and approved tariff bureaus can have joint meetings with carriers and set rates without being in violation of anti-trust laws.

CHAIRMAN WEEDING asked **SEN. SWYSGOOD** to clarify the difference between commercial insurance and farm insurance prices which he had mentioned in his opening statements.

SEN. SWYSGOOD stated commercial and farm insurance prices varied substantially. He told the Committee that the different insurance did not generally apply to non-regulated livestock haulers, but was applicable in some cases. He stated if non-regulated carriers are buying their full license plate and paying full commercial insurance they have accomplished two-thirds of the necessary steps connected with regulated carriers. He stated in many cases where insurance is a problem, the parents own the ranch and their children work on the ranch but make a living by hauling various commodities. The truck is registered under the farm or ranch and is covered by the farm or ranch liability policy. **SEN. SWYSGOOD** stated most of those policies cost between \$1500-\$2500 per year, whereas his costs for commercial insurance are almost \$9,000 per year which includes \$50,000 worth of cargo insurance. He also told the Committee the price difference between 16% GVW and 75% to 100% GVW fees is probably about \$500-\$600.

Closing by Sponsor:

SEN. SWYSGOOD thanked the Committee and the people who testified for a good hearing. He stated SB 255 addresses a difficult issue and expressed his appreciation to **Mr. Lundby** and **Mr. Pearson** for attending and participating in the hearing. He told them SB 255 would not be a hinderance to their businesses. He admitted regulation would limit their freedom and independence in their business and stated he relished freedom and independence himself. Given the existing and uneven regulations, however, he believes it is only fair for all livestock haulers to be regulated to the same extent.

He stated SB 255 would not put anybody out of business. It would provide the opportunity for *bona fide* farmers and ranchers to get

a Class B Authority to haul cattle for only a filing fee. **SEN. SWYSGOOD** emphasized he did not want to see anybody lose their livelihood and he had worked hard to insure SB 255 addressed all possible concerns. The only concern he said he could not address was the one of having one's own right to do as one sees fit. He stated the only way it would be possible to address that concern fairly would be to deregulate the whole business, a move which would not be beneficial to either the cattle or the transportation industry.

EXECUTIVE ACTION ON SENATE BILL 105

Discussion:

SEN. STANG stated the Legislature created the Class E Authority for log hauling last session under the premise that the majority of Montana's log haulers were in favor of regulation. **SEN. STANG** said the results of **SEN. HARP's** survey show this premise to be faulty; 62% of the responding log haulers oppose and 38% support PSC regulation. **SEN. STANG** stated the survey had a 62% response level, which is good for a survey. He told the Committee it was his intent to get SB 105 into the House Highways and Transportation Committee so the issues of rates and regulations can be considered simultaneously in one committee and this issue can be resolved.

SEN. SWYSGOOD spoke in favor of SB 105. He stated his log hauling constituents never wanted to be regulated, but they were forced into regulation by its passage during the 1991 Legislature. He believes the current regulation is not working as had been indicated, regardless of the testimony the Committee heard opposing SB 105. He stated the best thing for this industry would be to be deregulated.

SEN. HARP voiced his opposition to SB 105. He stated he and problems with sawmills and contractors in the Flathead area had been instrumental in the passage of the regulation currently in place. He expressed his belief that it would be premature to eliminate the current regulation because it has not had an opportunity to work; it has been enforced for only six months and its actual effects are not yet known. **SEN. HARP** admitted it was hard to deny the results of the survey. He stated he had expected the margin to be a lot closer.

Motion: **SEN. MCCLERNAN** moved SB 105 DO PASS.

Discussion:

SEN. TVEIT spoke against SB 105 and the motion. Along with the short time the regulation has been in existence, the problems with certain sawmills and the rate stability, he told the Committee all of the public input he had received was in opposition to repealing the current regulation. He stated only about 5% of the phone calls and letters he had received were in favor of SB 105 and 95% were against. He stated the arguments of

small one or two truck operations were persuasive; people had written him and said at least the sawmills are talking to us now, before they did not. **SEN. TVEIT** told the Committee if the anti-regulatory sentiment is still as strong two years from now, he would be in favor of repealing the regulation. At this point, however, he believes the regulation has not been in effect long enough to work.

SEN. REA voiced his support of SB 105. He stated he was in the minority of the Senate Highways Committee who voted against regulation last session. The arguments presented in favor of regulation this session had not changed his mind.

SEN. STANG responded to **SEN. TVEIT's** comments about constituent response. He stated the cards **SEN. TVEIT** and other committee members received were sent by members of the Log Haulers Association who lobbied to have regulation in the first place. He told the committee members they had probably gotten letters from 95% of the 122 people who had indicated they strongly favored PSC regulation on **SEN. HARP's** survey. **SEN. STANG** likened that response to asking only doctors to respond to a survey on socialized medicine; the result would be a slanted opinion. He expressed his opinion that two mills in the Flathead area should not dictate the log hauling policy for all of Montana even though those mills process a large percentage of the logs processed in the State. He told the Committee three sawmills are in operation in his district and the log haulers there are adamantly opposed to regulation.

CHAIRMAN WEEDING observed the complaints about these two mills had been noticeably absent at this hearing. Instead people complained about the inconvenience, nuisance and violation of rights accompanying regulation. He stated this makes him believe regulation has had the effect the people who originally asked for regulation desired even though it has only been in effect for three or four months; apparently a better communication now exists between the mills, the logger and the trucker. He stated the truckers are no longer accusing the loggers of skimming transportation fees.

SEN. BRUSKI-MAUS commented, contrary to popular opinion, log haulers do operate and live in her district.

Vote: The motion PASSED by role call vote. **SEN. TOEWS** was excused from the Committee meeting and because his vote was deciding the Committee allowed him to cast his vote later by proxy (Exhibit #7).

EXECUTIVE ACTION ON SENATE BILL 219

Discussion of Amendments:

Dave Bohyer explained the first of three potential amendments **CHAIRMAN WEEDING** had requested. He stated the first amendment

(Exhibit #8a) would take out the reference to the provinces of Canada.

Motion/Vote:

SEN. SWYSGOOD moved to AMEND SB 219 (Exhibit #8) and the motion CARRIED UNANIMOUSLY.

Discussion of Amendments:

Dave Bohyer explained the second amendment (Exhibit #8b) would require at least half the personnel enforcing the GVW statutes at joint weigh stations to be Montana residents.

SEN. MCCLERNAN asked **Dave Galt** if this amendment would negate DOT's purpose for SB 219. **Dave Galt** replied if the amendment passed it would limit his ability to negotiate with other states.

SEN. STANG remarked even if this amendment were passed, he would still vote against SB 219 because the possibility would exist to replace one half of the current staff at Haugen with Idaho employees. He stated he would like to prevent this and expressed his preference for an amendment DOT had prepared (Exhibit #8c).

CHAIRMAN WEEDING replied he had also asked **Dave Bohyer** to prepare a similar amendment (Exhibit #8d). He informed the Committee that Legislative Council's opinion is that this amendment is unconstitutional. **Dave Bohyer** explained a constitutional problem exists whenever a position had residency requirement. He stated this was a fairly long-standing legal principal. He said **Greg Petesch** of the Legislative Council had said the Committee could establish a residency requirement for these particular positions, but he was fairly certain such a requirement would be overturned in court if anyone challenged it.

SEN. STANG remarked the amendment prepared by DOT (Exhibit #8c) does not make any residence requirement.

Motion: After determining DOT's amendment had no constitutional difficulties, **SEN. HARP** moved TO AMEND SB 219 (Exhibit #8c).

Discussion of Amendment:

Dave Bohyer stated this amendment (Exhibit #8c) would essentially guarantee a person they would be employed for life. Even if a person gets terminated for a cause not pertaining to the creation or operation of a joint weigh station, the language this amendment would introduce could be used as a defense against a firing.

SEN. HARP WITHDREW his motion TO AMEND SB 219 (Exhibit #8c).

Dave Bohyer explained the last amendment he had prepared (Exhibit #8d). He stated this amendment would give DOT the flexibility to replace the people currently working at a Joint Weigh Station for cause if they are replaced by Montana residents. He assured the Committee the amendment would ensure that people who currently

work at joint weigh stations could not be replaced by non-residents for the sole purpose of entering into one of these agreements.

Motion: SEN. STANG moved to AMEND SB 219 (Exhibit #8d).

Discussion of Amendment:

SEN. SWYSGOOD asked what would happen to the Montana residents now employed at Coutts, Alberta if the joint weigh station were eliminated. Dave Bohyer replied the personnel would have no protection if the station at Coutts were eliminated before October 1, 1993, SB 219's effective date. Dave Galt commented DOT would probably place the people currently employed at Coutts in different positions if the joint weigh station were eliminated.

SEN. SWYSGOOD stated he would feel uncomfortable if people lost their jobs if he worked to eliminated this joint weigh station for philosophical reasons.

CHAIRMAN WEEDING remarked with the passage of time, fewer and fewer people would be affected by this language.

SEN. TVEIT asked if this amendment also posed a constitutional problem. Dave Bohyer replied whenever a residency requirement is established with employment a potential constitutional problem exists taking the form of an equal protection problem under both the state and the federal constitution. He emphasized he was not a lawyer, but that he had discussed this problem over with lawyers in the past. SEN. TVEIT stated if SB 219 were so amended and then became law it could cost the state money. He reminded the Committee the legislature was trying to cut the budget.

SEN. SWYSGOOD reiterated SB 219 would currently apply only to the Haugen employees; if the joint weigh station at Coutts were eliminated, SB 219 would not have any effect in that regard. Dave Bohyer agreed.

SEN. TVEIT asked what would be the cost to future joint station ventures. Dave Galt replied it was his understanding DOT could negotiate and enter into new agreements after Oct. 1, 1993. If only one joint station remained he could not lay any of those people off. He stated he had no problem with that.

Motion/Vote: SEN. STANG WITHDREW his previous motion TO AMEND SB 219 (Exhibit #8d) and moved SB 219 DO NOT PASS AS AMENDED. The motion CARRIED with SEN. TVEIT and CHAIRMAN WEEDING voting NO. SEN. TOEWS was excused and did not vote.

EXECUTIVE ACTION ON SENATE BILL 198

Discussion:

SEN. HARP stated there was no question that SB 198 was necessary. He had received a memo from Mr. Beck concerning Section 4 in

which Mr. Beck stated he would agree to striking the language relating to maintenance from SB 198. The amendment would be to strike "and section 4" on page 17 line 9 and on page 17 line 20.

Motion: SEN. HARP moved to AMEND SB 198 (Exhibit #9, numbers 7 and 8).

Discussion on the Amendment:

SEN. HARP indicated he was not sure the amendment was necessary, but stated he would feel safer if SB 198 would be so amended.

CHAIRMAN WEEDING expressed his agreement.

Vote: The motion CARRIED UNANIMOUSLY

Discussion:

Dave Bohyer stated Mr. Beck brought several amendments changing some language to comport with the revised federal program to the Committee at the Jan. 28th meeting. He told the Committee that he and Mr. Beck had also discussed the need for a definition within SB 198 for federal aid highway funds (Exhibit 9, items 1-6).

SEN. HARP stated SB 198 is attempting to address "a moving target"; the actual content of the federal highway program SB 198 is trying to implement is yet unknown. He suggested the Committee reexamine and completely redo Title 60 in two years when the federal laws will have changed. To this end, he stated the Committee might have a committee bill drafted which would ask for a review of Title 60.

Jim Beck expressed his agreement with SEN. HARP. Because federal laws were still evolving, he stated he had attempted to make the provisions in SB 198 broad enough so DOT was not handcuffed. He stated he had informed the Committee that these provisions were broad and would invest the Highway Commission with broad discretionary authority insofar as in directing the source of the funds Montana would receive under the federal Intermodal Surface Transportation Efficiency Act (ISTEA). The Highway Commission would have the discretion to target these funds to the area that they felt were needed. Mr. Beck added that a few repealers, for example the sections relating to the Lady Bird Johnson Act, were intended to clean-up Title 60 in some small part.

CHAIRMAN WEEDING asked Jim Beck to clarify the amendments he was proposing (Exhibit #9).

Jim Beck stated he had one amendment. He had inadvertently stricken a certain provision from MCA 60-2-103 while trying to clean out a chapter. Legislative Counsel suggested the provision be amended into 2-15-2502. The amendment would change the phrase in SB 198 "adopt rules necessary to perform its duties" to "adopt rules for its government".

SEN. SWYSGOOD asked if that language was correct.

Dave Bohyer explained the difference between the two phrases and why the latter was preferable. The Highway Commission's duties are the allocation of funds to the financial districts, etc. Its government, on the other hand, refers to the authority to adopt rules addressing how their meetings should be conducted, for example whether the Commission needs a quorum to take action, etc. The language in the amendment would make it clear the Highway Commission could not adopt its own rules to allocate federal funds to the financial districts because that would definitely result in a difference in their authority.

Jim Beck expressed his agreement with **Dave Bohyer** and suggested the Committee simply adopt the old language of the section and then there would be no problem.

SEN. HARP asked about item 5 on the sheet of amendments which would change the format of the formula, which states no more than 1/3 of funds can go into one financial district. Item 5 amends that to 25% percent of a district. He asked **Jim Beck** to clarify that amendment. **Jim Beck** stated the 25% is currently in existing law. The "1/3" provision means no one financial district can get more than that amount of Montana's total allocation. The 25% allows a district to receive 25% more than the third, but the district would have to repay that extra money. **JOHN HARP** stated the 25% provision would allow a financial district to more efficiently fund larger projects like highway construction.

Jim Beck said he did not think any financial district had ever received 1/3 of the federal allocation. That provision was placed in the statute when Montana had 12 financial districts, where currently there are five.

Dave Bohyer commented this language is basically a restatement of language from a repealed section, but a substantive difference does exist. That difference is found in the second sentence which states the up to 25% overrun "must be deducted from future apportionments to that district". **Dave Bohyer** told the Committee the old language stated that money "must be deducted from apportionments to that district in the following year". According to **Dave Bohyer** this gives the Commission a little more flexibility about how long the repayment should be stretched out.

Motion/Vote: **SEN. HARP** moved to AMEND SB 198 (Exhibit #9, items 1-6), and the motion CARRIED UNANIMOUSLY.

Discussion:

SEN. HARP expressed his hope that the Committee put together a committee bill mandating the revisitation of Title 60 after the federal statutes are decided. He stated Montana needs to have a good statute and until it is know what the effects of federal legislation are going to be, Montana's law cannot be improved.


Jim Beck agreed that title 60 needs to be reworked. He also told the Committee certain philosophical questions need to be aired. An example of such a question would be how much discretion the legislature actually wants to give the Highway Commission.

CHAIRMAN WEEDING stated since there was a consensus on this issue, the Committee would discuss and request a draft of such a bill at a later date.

Motion/Vote: SEN. TVEIT moved SB 198 DO PASS AS AMENDED, and the motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:55 p.m.



SENATOR CECIL WEEDING, Chair



BETH E. SATRE, Secretary

CW/bes

ROLL CALL

SENATE COMMITTEE HIGHWAYS & TRANSPORTATION DATE FEB. 2, 1993
JAN

[illegible]

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 3, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration Senate Bill No. 105 (first reading copy -- white), respectfully report that Senate Bill No. 105 do pass.

Signed: Cecil Weeding
Senator Cecil Weeding, Chair

AP Amd. Coord.
SR Sec. of Senate

271640SC.San

ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 3, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration Senate Bill No. 219 (first reading copy -- white), respectfully report that Senate Bill No. 219 be amended as follows and as so amended do not pass.

Signed: Cecil Weeding
Senator Cecil Weeding, Chair

That such amendments read:

1. Title, line 7.
Strike: "OR PROVINCE"
2. Page 1, line 19.
Strike: "or province"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 3, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration Senate Bill No. 198 (first reading copy -- white), respectfully report that Senate Bill No. 198 be amended as follows and as so amended do pass.

Signed: Cecil Weeding
Senator Cecil Weeding, Chair

That such amendments read:

1. Page 1.

Following: line 18

Insert: "(1) "Federal-aid highway funds" means those funds made available for expenditure by the department pursuant to Title 23, U.S.C."

Renumber: subsequent subsections

2. Page 6, lines 6 and 7.

Following: "necessary" on line 6

Strike: the remainder of line 6 through "duties" on line 7

Insert: "for its government"

3. Page 12, line 18.

Following: "of"

Strike: "construction"

Insert: "federal-aid highway"

4. Page 13, line 6.

Following: "available"

Strike: "state construction"

Insert: "federal-aid highway"

5. Page 13, line 9.

Following: "available"

Strike: "state construction"

Insert: "federal-aid highway"

6. Page 13.

Following: line 20

Insert: "(5) To the extent necessary to permit the orderly programming and construction of projects, obligations in any financial district may exceed the amount apportioned to that district by up to 25%. The amount of excess obligations must be deducted from future apportionments to that district."

7. Page 17, lines 9 and 10.
Strike: "and [section 4]"

8. Page 17, line 20.
Strike: "and [section 4]"

ROLL CALL VOTE

SENATE COMMITTEE HIGHWAYS & TRANSPORTATION BILL NO. SB 105

DATE FEBRUARY 2, 1993 TIME 2:20 A.M. P.M.

[illegible]

BETH SATRE
SECRETARY

SEN. CECIL WEEDING,
CHAIR

MOTION: NO PASS SB 105

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.
Unified investments, Title 17, ch. 6, part 2.

Montana Capital Company Act, Title 90, ch. 8.

SENATE HIGHWAYS

EXHIBIT NO. 1

DATE

February 2, 1993

BILL NO.

HB 170

2-15-1809 reserved.

2-15-1810. Repealed. Sec. 24, Ch. 316, L. 1989.
History: En. Sec. 3, Ch. 701, L. 1985.

2-15-1811. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor with the consent of the senate for terms of 2 years.

(3) The members are:

- (a) two members of the printing industry;
- (b) two county commissioners;
- (c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed in the same manner and amount as provided for in 37-1-133.

History: (1) thru (4) En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974; Sec. 82A-904, R.C.M. 1947; (5) En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974; Sec. 16-1228, R.C.M. 1947; R.C.M. 1947, 16-1228, 82A-904; amd. Sec. 1, Ch. 247, L. 1981; MCA 1979, 2-15-1102; redes. 2-15-1811 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 2, Ch. 474, L. 1981.

Cross-References

County printing, Title 7, ch. 5, part 24.

2-15-1812. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

(2) The board consists of nine members. The members are:

- (a) one member of the Montana pilots' association;
- (b) one member of the Montana chamber of commerce;
- (c) one representative of the Montana airport management association;
- (d) one member of the Montana county commissioners association;
- (e) one person actively engaged in aviation education in this state;
- (f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;
- (g) one member of the Montana league of cities and towns;
- (h) one person representing the general public; and
- (i) one person who must at the time of appointment be an active fixed base operator in this state, or an official of a fixed base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974; R.C.M. 1947, 82A-905; MCA 1979, 2-15-1103; redes. 2-15-1812 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 3, Ch. 685, L. 1983.

AMAA

AMAA Newsletter

Fall-Winter 1992Pam Langley, editor

Annual Meeting Jan. 25 in Great Falls

AMAA's annual meeting and election of the board of directors is set for Monday, Jan. 25 and Tuesday, Jan. 26 at the Heritage Inn in Great Falls, according to Bill Sheets, Big Sandy Flying, AMAA president.

Events will begin with registration from 11 a.m. to 1 p.m. on Monday and feature three points for pesticide recertification. The MABA pesticide workshop on Tuesday is available for an additional six recertification points.

The MABA/MGEA Trade Show will again this year begin on Monday for the AMAA meeting and include companies of specific interest to aerial applicators.

Monday Program

Point sessions on tap at the AMAA meeting include a presentation by Monsanto beginning at 1 p.m. on Monday by Martin Lemon, Denver. Lemon, an environmental specialist for Monsanto, will address in drift prevention.

Included in Lemon's presentation will be proper application, laws affecting aerial applicators, application equipment, environmental considerations such as weather and typography, product information on toxicology and environmental fate, product characteristics, handling and mixing, effects of additives, managing movement of aerial spray, public perception issues, rights and responsibilities, political considerations, and making public relations work for you.

The opening session will be followed by a workshop on single engine air tankers (SEAT) with Rick Burger, chief of the Air Operations Bureau of the Montana Department of State Lands, which is scheduled for 4:00 to 4:30 p.m.

The business meeting and election will be from 4:30 to 6:00 p.m. During the meeting, 1992 activities will be recapped including the calibration flyin and work on containment rules, legislative issues will be discussed and the election of the 1993 board of directors will be

conducted.

Members who have other issues they would like discussed at the business meeting or who are interested in serving on the AMAA board of directors are encouraged to contact AMAA President Bill Sheets, Big Sandy Flying Service. He can be reached by calling 378-2240 or by writing him at PO Box 565, Big Sandy, 59520.

The cocktail hour at 6:30 and dinner at 7:30 at the Heritage Inn. The dinner is sponsored by **Monsanto** and the cocktail hour is being sponsored by **Miles**.

Tuesday Morning Program

After a Tuesday morning breakfast at 7 a.m., Nanette Simonian, Miles, Billings, will present a session on closed system safety at 8 a.m. and Barry Beaudoin, Wilbur-Ellis, Great Falls, will discuss the 1993 Montana pesticide container recycling program from 8:30 to 9 a.m. when the meeting concludes.

MABA's pesticide workshop begins at 9 a.m. on Tuesday morning and is available for six recertification points.

The cost of registration for the AMAA annual meeting is \$10 for members and \$25 for nonmembers while the cost of the MABA pesticide workshop on Tuesday is \$30 in advance and \$35 on site.

AMAA members also may be interested in attending the MABA/MGEA Convention on Wednesday, Jan. 27, and Thursday, Jan. 28. That convention will feature three half-day seminars. The first two will cover the nuts and bolts of EPA, OSHA and DOT compliance while the final session is entitled "Personanalysis: Improving Sales Skills by Understanding Your Customers." The advance registration fee for the MABA/MGEA Convention is \$85 and the on site fee will be \$95.

To make reservations at the Heritage Inn, call 761-1900. Convention room rates are \$50 for a single and \$56 for a double plus tax.

President's Message

by Bill Sheets
AMAA President

"You need this organization." Those were the words of U.S. Rep. Ron Marlenee as he addressed our first annual Association of Montana Aerial Applicators (AMAA) meeting last year in Great Falls.

Thanks to you, initial AMAA membership and growth during the first two years has been strong and positive.

Membership presently stands at 53, approximately 20 per cent of which are allied industry members.

By now, you probably recognize the purpose of this message is to remind you that this is the time of year to concentrate our efforts on 1993 membership and membership renewal.

Most aerial applicators are frustrated and confused with the ever increasing demands of government regulations in our industry. But, some have not, yet recognized the importance of joining AMAA in the effort to protect our business interests.

Your AMAA dues also make you a member of the Montana Agricultural Business Association (MABA). This AMAA/MABA coalition greatly increases our power to deal with the issues vital to the future of our common agri-business interests.

Your involvement is critical to the future of our industry. Every day special interest groups and bureaucrats are attempting to impose more complex and expensive regulations.

With your voice, we can turn most of these challenges into positive conclusions. It's a matter of numbers folks!

Please do your part for the Association of Montana Aerial Applicators by joining or renewing your 1993 AMAA membership now.

Just complete and mail the enclosed for today.

Having opened with the quote of a politician, I shall also close with one by Herbert Hoover. "The dues you pay to your industry organization is simply the rent you owe for the space you occupy within the industry."

AMAA Board Members featured in Ag Air Update

Two AMAA board members were featured in the national ag aviation newspaper Ag Air

Update in its November 1992 edition.

Mike Biggerstaff, Big B Flying Service, Stanford, and John Semple, SB Spraying, Helena, were the subjects of a feature story in the monthly newspaper which is published in Georgia.

The teaser on the feature was "Montana isn't a state known for its vast number of ag aircraft. But aerial application does exist in Montana. The article then describes each operation and how "Montana's unique ag operators diversify for profit."

The two-page feature by writer Bill Lavender also contained several photos.

Ag pilots wanting to subscribe to Ag Air Update may do so for \$15 a year. The address is PO Box 548, Perry, GA, 31069. Two-year subscriptions are \$25.

In Memory of Monte Blain

Reprinted from Oct. 1992 "Montana and the Sky"

Monte Wallace Blain of Joliet was killed May 27 in an auto accident west of Billings. He was born August 31, 1948, a son of Wallace and Marge Blain. He spent his entire life in the Joliet area.

Monte began ground school in Billings at the age of 16 and learned to fly at Hoffman Flying School. He knew he wanted a career that would allow him to fly and became involved in his father's flying service. He later became owner-operator of Joliet Flying Service and expanded the business built on his father's foundation into one of the top ag operations in the state.

Monte's wife Linda, son Wade and daughter Shelley, have all been involved in the business. Linda and Wade will continue to operate the flying service.

Monte believed firmly in creating an organization of ag pilots and strongly supported the successful creation of the Association of Montana Aerial Applicators (AMAA) which was formed and held its first convention last year.

Although a strong business competitor, Monte was highly respected by his peers and will be missed by all.

Memorial may be sent to: Monte Blain Scholarship Fund, AMAA, PO Box 5415, Helena, MT 59604.

(Editor's Note: To date, more than \$1,000 has been received for the scholarship fund. Ag pilots who have not yet contributed are encouraged to send in their contributions.)

AMAA Board of Directors

Bill Sheets, President
Big Sandy Flying Service
PO Box 565
Big Sandy, MT 59520
378-2240

Mike Biggerstaff, Vice President
Big B Flying Service
PO Box 340
Stanford, MT 59479
566-2236

Jim Heppner, Secretary
Frontier Aviation
PO Box 208
Dutton, MT 59433
476-3332

John Semple, Treasurer
S.B. Spraying
2507 Roberts
Helena, MT 59601
443-7487

Roger Stradley
Agricola Pennatus
PO Box 1287
Belgrade, MT 59714
388-6733

F.H. Buster Ness
Ag Air Inc.
PO Box 670
Chester, MT 59522
759-5191

Ron Rowland
G & R Air Spray
PO Box 226
Geraldine, MT 59446
737-4488

Boyd Morgan
Quality Spraying Service
18866 Dry Creek Road
Belgrade, MT 59714
388-4449

Andy Taylor
Taylor Aviation, Inc.
Po Box 134
Fort Benton, MT 59442
622-5682

AMAA Getting Ready for Legislative Session

Your association's legislative committee is preparing for the 1993 Montana Legislature which is scheduled to begin Jan. 4.

During the session, you can reach your representative or senator by calling 444-4800 and leaving a message. To find out the status of legislation when you know the bill number--which House it is in, any scheduled hearing dates, etc.--you can call 800-237-5079. And, of course, your lobbyist John Semple can be reached by calling 443-7487.

Join AMAA in 1993

With the 1993 Montana Legislature just a few days away, AMAA is asking your support to be able to represent our industry.

A membership application is printed below. If you've not already paid your 1993, we encourage you to join and also encourage you to participate in AMAA by attending the annual meeting Jan. 25.

Dues are \$250 for aerial applicators and \$100 for allied industry nonvoting members of the association. Allied industry may pay \$250 and receive full voting membership.

1992 AMAA members included:

AERIAL APPLICATORS:

Ag Air Inc., Chester
Agwagon Inc., Bozeman
Baldwin Spraying, Ismay
Big Sandy Flying, Big Sandy
Elgen Aerial, Culbertson
First State Co., Cut Bank
French Aero, Hobson
G&R Air Spray, Geraldine
High Plains, Shelby
J & J Aerial, Brady
Joliet Flying, Joliet
Lohse Air Spray, Carter
Mountain Ag, Hamilton
Newton Ag Inc, Lewistown
Pearcy Aviation, Miles City
Quality Spraying, Belgrade
S. B. Spraying, Helena
Weibert Aerial, Hardin
John Drydahl, Shelby
Flathead Helicopter, Lakeside

Agricola Pennatus, Belgrade
B & B Enterprises, Valier
Big B Flying, Stanford
Dillon Ag Application, Dillon
Farm Spray Service, Big Sandy
Flying Farmer, Chester
Frontier Aviation, Dutton
Gliko Aerial, Belt
Hutchinson Spray, Hingham
J & L Aviation, Hardin
Lincoln Spraying, Gildford
Moore Quality Flying, Roundup
Nelson Spraying, Chester
Nitumo Helicopter, Choteau
Pluhar Aerial, Angela
Russaero Flying, Malta
Taylor Aviation, Fort Benton
Yellowstone Air, Big Timber
Russell Pederson, Circle

ALLIED INDUSTRY FULL VOTING MEMBERS:

Rhone Poulenc, Billings *Hoechst Roussel, Great Falls*

ALLIED INDUSTRY MEMBERS:

DowElanco, Ulm *DuPont, Billings*
DuPont, Great Falls *FMC, Greely, Colorado*
Miles Inc., Billings *Sandoz, Great Falls*
Westchem, Billings *Wilbur Ellis, Billings*
Wilbur Ellis, Great Falls *Wilbur Ellis, Minot*
Gallatin Farmers, Belgrade *Helena Aircraft, Helena*
Sky Tractor, Hillsboro, ND *Loveland Industries, Billings*

Washington D.C. Update

by John Semple, NAAA Legislative Committee Chairman

NAAA Produces New Video

"Agriculture's Airforce" is the title of a new educational video produced by NAAA which targets grade school age children but also is useful for use in civic groups. Almost all of the production cost was absorbed by donations from state associations and others.

For information on how to obtain the video, give me a call at 443-7487.

1993 Congressional Action

Little happened in the U.S. Congress in 1993 to affect our industry except for the exemption from a \$300 hazardous material fee. And, that exemption came thanks to legislation sponsored primarily by **Sen. Conrad Burns**, R-Montana.

While reauthorization of the Clean Water Act did not move out of a Senate committee, its chief sponsor **Sen. Max Baucus** and his staff made significant changes to the legislation during the year which are beneficial for agricultural and agribusiness but at the same time provide environmental protection.

Members are encouraged to thank both of Montana's senators for their efforts this year.

Hazmat Training Required April 1, 1993

Aerial applicators are affected by U.S. Department of Transportation's new requirement for training of all employees involved with the transportation of hazardous materials.

The new requirement is effective April 1, 1993 and has no minimum volume--workers must be trained if they handle any quantity of hazardous material for transportation by roadway or rail.

DOT considers aviation fuel and some but not all pesticides hazardous material. The bottom line appears to be that if either fuel or pesticides are not delivered by someone else to you at your landing site, you are affected by the new rule.

AMAA members should refer to the MABA November-December Newsletter they recently

received for more detailed information. In addition, MABA may be sponsoring a workshop in Great Falls in February or March to help members comply.

Worker Protection Standards April 1994

EPA has set April 1994 for compliance with its training requirements for Worker Protection. Currently EPA is drafting its Worker Protection Compliance manual and has set March as its target date for completion of the manual and September for distribution of the manual.

A section of the requirements that impacts ag pilots is 170.240 which covers personal protective equipment. If a label requires, pilots will have to wear long-sleeve shirts and respirators, even in a closed cockpit environment. The new rule also requires ag pilots to wear chemical resistant gloves when entering or leaving the cockpit.

No Montanan on U.S. House Ag Committee

For the first time in many years, Montana will not have a U.S. Congressman on the U.S. House of Representatives Agriculture Committee in 1993. The Ag Committee has been reorganized and Montana's lone congressman, Rep. Pat Williams, is not a member of the committee.

NAAA Working on Tank Exemption

The NAAA is working on your behalf for a temporary waiver from the U.S. Department of Transportation's requirement for over the road fuel tanks as the DOT is wanting to upgrade their original requirements.

Recordkeeping May Be Delayed

Final completion of 1990 USDA Farm Bill pesticide recordkeeping requirements, originally expected to be completed January 1, may now be delayed until February or even later due to the changeover in the Administration. The obvious impact on aerial applicators is that farmers may be requesting assistance in keeping these records.

AMAA

PO Box 5415

Helena, MT 59604

AMAA 1993 Membership

Name _____ Phone _____

Business _____

Address _____

City _____ State _____ Zip _____

Please send \$250 for 1993 AMAA membership to:

AMAA
PO Box 5415
Helena, MT 59604

1993 AMAA Annual Meeting Registration

Name _____

Business _____

Address _____

City _____ State _____ Zip _____

Member Registration (@\$10).....\$ _____

NonMember Registration (@\$25.....\$ _____

MABA/MGEA Pesticide Workshop @\$30.....\$ _____

MABA/MGEA Convention @85.....\$ _____

TOTAL.....\$ _____

SENATE HIGHWAYS

EXHIBIT NO. 3

DATE 2/2/93

BILL NO. SB 255

2/2/93

Hagenbarth Livestock

Jim Hagenbarth

P.O. Box 1128

Dillon, MT 59725

Senator Cecil Weeding
Chairman, Highways and Transportation
Capitol Station
Helena MT 59620

Re: Senate Bill No. 255-Swysgood

Dear Senator Weeding:

I am submitting testimony in favor of Senate Bill 255. Our family has been in the livestock business in Southwestern Montana for nearly a century. We rely heavily on the commercial trucking industry to haul our livestock to and from the summer ranges and the markets. With the never ending addition of regulations and expenses, it is becoming increasingly difficult for those in the commercial trucking industry to make a decent living. Many of our ranching friends have trucks which they use to bolster their income by hauling livestock for their neighbors and anyone else they can. We do not use these truckers because often times their insurance is inadequate and they are competing unfairly with the commercial trucker, who mean so much to our business.

Senate Bill 255, introduced by Senator Swysgood, is an effort to correct this inequity. I realize this may put a hardship on those who choose to be illegal or use a loophole in the existing law, but for the long term good of the commercial trucking industry and the livestock industry in this state, the playing field has to be level. Senate Bill 255 gives ample remedy to those ranchers who want a Class B certificate. I strongly support Senate Bill 255 and ask that the committee does also.

Thanks,

Jim Hagenbarth

Jim Hagenbarth

Statement to Senate Highways and Transportation Committee

SB 255 - February 2, 1993

Montana Motor Carriers Association

SENATE HIGHWAYS

EXHIBIT NO. # 4

DATE February 2, 1993

BILL NO. SB 255

Mr. Chairman. Members of the Committee. For the record I am Ben Havdahl, representing the Montana Motor Carriers Association. MMCA represents some 650 motor carrier members, 136 of them are regulated intrastate livestock carriers who belong to the Montana Livestock Tariff Bureau of which I am General Manager.

MMCA and the members of the Livestock Tariff Bureau want to go on record in support of SB 255 for all the reasons outlined before this committee by Senator Swysgood.

The statute governing intrastate livestock hauling under PSC regulation was passed in the 1971 session and has been in effect for more than 20 years. The statute has never been amended.

Several regulated livestock haulers operating under PSC authority, recently and in the past, have alleged to MMCA that several trucking operations have come into being around the State hauling livestock intrastate, for hire, in Montana without PSC authority.

This has come about because of the "exception to regulation provision" in the law that allows farmers, ranchers and raisers of livestock to commercially to haul livestock, for hire without authority, as long as they are "bona fide" farmers, ranchers or livestock raisers.

The result has been that a number of farmer, rancher, livestock raiser trucking operations have come into being and are undercutting the regulated tariff now in effect for regulated livestock carriers. These firms are allegedly operating equipment and pay GVW fees assessed at 16% of the GVW rates assessed on other equipment such as truck tractors and trailers and as such they are not included in the definition of commercial vehicle for intrastate commerce and are exempt from safety regulations.

Regulated carriers who are operating under difficult economic conditions, find it impossible to compete with trucking operations who get this kind of discount in GVW fees, do not have to meet safety requirements, and can freely cut rates for transporting livestock.

The trucking concerns operating under the exemption have been operating "legally" under the law notwithstanding they have not had to comply with rate regulation, insurance requirements, report filings, and other requirements of the Motor Carrier Act. They obtain copies of the approved tariff rates by PSC and simply under cut them to obtain the transportation business.

A recent compilation by MMCA, of 78 livestock carrier's income and expenditure reports filed with PSC for the year 1991 with additional adjustments for a 35.87% increase in workers comp rates and the 7% fuel, GVW fees and other surtax increases, shows the bottom line for these carriers to be a 100.67% operating ratio. Put an other way, a .67% loss.

MMCA supports SB 255 and the attempt to tighten up the law dealing with regulation of livestock hauling carriers to remove the entire exemption provision, and "grandfather" all existing trucking concerns by requiring PSC to grant certificates of public convenience and necessity to them and making them Class B common carriers.

EXHIBIT ⁴DATE 2/2/93SB 255

SUMMARY - LIVESTOCK - INTRASTATE (78 Carriers)

INCOME STATEMENT
FOR THE YEAR ENDED
DECEMBER 31, 1991

LINE #	ACCOUNT (1)	SYSTEM-WIDE (2)	PROJECTED INCREASES (3)	PROJECTED INCOME STATEMENT (4)
1	OPERATING REVENUE			
2	A)INTRASTATE REVENUE			
3	B)INTERSTATE REVENUE			
4	C)NON-REGULATED REVENUE			
5	TOTAL REVENUE	\$3,169,816.79		\$3,169,816.79
6	EXPENSES			
7	SALARIES-OFFICERS & SUPER. PERSONNEL			
8	SALARIES & WAGES			
9	A)CLERICAL & ADMINISTRATIVE			
10	B)DRIVERS & HELPERS			
11	C)CARGO HANDLERS			
12	D)VEHICLE REPAIR & SERVICE			
13	E)OTHER LABOR			
14	OTHER FRINGES			
15	A)PAYROLL TAXES			
16	B)WORKMAN'S COMPENSATION	\$27,303.53	\$9,793.78	\$37,097.31
17	C)PENSION & WELFARE EXPENSES			
18	OPERATING SUPPLIES & EXPENSES			
19	A)FUEL FOR MOTOR VEHICLES			
20	B)VEHICLE PARTS			
21	C)OTHER OPERATING SUPPLIES & EXPENSES			
22	GENERAL SUPPLIES & EXPENSES			
23	OPERATING TAXES & LICENSES			
24	A)GAS,FUEL & OIL TAXES	\$38,097.95	\$2,666.86	\$40,764.81
25	B)REAL ESTATE & PERSONAL PROP. TAXES	\$19,366.46	\$1,355.65	\$20,722.11
26	C)VEHICLE LICENSE & REGISTRATION FEES			
27	D)OTHER TAXES	\$35,875.57	\$2,511.29	\$38,386.86
28	INSURANCE			
29	COMMUNICATIONS & UTILITIES			
30	DEPRECIATION & AMORTIZATION			
31	A)REVENUE EQUIPMENT			
32	B)OTHER			
33	PURCHASED TRANSPORTATION			
34	A)WITH DRIVER			
35	B)WITHOUT DRIVER			
36	C)OTHER PURCHASED TRANSPORTATION			
37	BUILDING & OFFICE EQUIPMENT RENTS			
38	+ OR - ON DISPOSITION OF OPER. ASSETS			
39	MISCELLANEOUS EXPENSES			
40	TOTAL EXPENSES	\$3,174,828.95	\$16,327.57	\$3,191,156.52
41	NET INCOME OR LOSS			
42	OPERATING RATIO	100.16%		100.67%
43	Work Comp Increase 35.87% Surtax Increase 7.00%			

MONTANA LIVESTOCK TARIFF BUREAU

Mileage Commodity Rates

Blue - Rates in Dollars and Cents

Yellow - Rates in Cents Per CWT

For more information call

406-442-6600 in Helena.

SENATE HIGHWAYS

EXHIBIT NO. 4a

DATE February 2, 19

BILL NO. SB 255

The original document (from the Montana Motor Carriers Association) is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

PSC Testimony, SB 255, Livestock

The PSC supports SB 255. The proposed legislation is in the interests of the public.

Section 69-12-405, MCA, regulating the transportation of livestock as motor carriage, was enacted in 1971. The statute has practical problems. SB 255 will eliminate these.

A primary objective of motor carrier regulation is to ensure stability in the industry. Normally, regulation of entry into the industry prevents destructive competition, yet allows competition where beneficial. Rate and service regulation, including an obligation to serve, prevents monopoly abuses.

However, existing livestock carrier regulation cannot achieve this because a segment of the commercial livestock transportation industry is unregulated. There is an overly broad exclusion creating direct competition between a regulated segment of the industry and an unregulated segment.

SB 255 properly narrows the exclusion. If enacted it will enable regulation to work as it is intended, creating and preserving a stable livestock transportation industry.

The "grandfather" provision is fair to the status quo unregulated carriers. It will allow those now operating under the broad exclusion to become regulated carriers.

TESTIMONY OF WAYNE BUDT, ADMINISTRATOR, TRANSPORTATION DIVISION
MONTANA PUBLIC SERVICE COMMISSION

SENATE HIGHWAYS

EXHIBIT NO. 6

DATE February 2

BILL NO. SB 255

TESTIMONY
FOR SENATE BILL 255
AN ACT REVISING THE REMUNERATION EXCEPTION
APPLICABLE TO TRANSPORTATION OF LIVESTOCK

INTRODUCED BY SENATOR CHARLES SWYSGOOD

Submitted for
Montana Stockgrowers Association
by Candace Torgerson

Mr. Chairman, members of the Committee, for the record, my name is Candace Torgerson. I am providing testimony on behalf of the Montana Stockgrowers Association regarding Senate Bill 255.

Senator Swysgood addressed the Marketing & Transportation Committee of the Montana Stockgrowers association at our annual convention in December concerning this bill. The Montana Stockgrowers Association support Senate Bill 255.

This bill will require appropriate licensing in situations where persons are transporting livestock for hire, while still promoting the traditional good neighbor policy of trading work and helping out your neighbors.

The Montana Stockgrowers Association, ^{MT Stockgrowers Association} requests a "do pass" on Senate Bill 255.

Thank you.

53rd LEGISLATIVE SESSION
SENATE HIGHWAYS AND TRANSPORTATION

SENATE HIGHWAYS

EXHIBIT NO. 7

DATE February 2, 1993

BILL NO. SB 105

PROXY VOTE

I, Senator DARYL TOEWS do hereby
grant my proxy vote to Chairman Weeding or Secretary Satre as
follows:

BILL NUMBER SB 105

MOTION

Do Pass

Yes ✓

No

Do Not Pass

Yes

No

Indefinitely Postponed

Yes

No

Tabled

Yes

No

Daryl Tows

Signature

2-4-93

Date

I was Excused on 2-3-93 and ^{CAME} IN to
The office to cast my vote

Amendments to Senate Bill No. 219
First Reading Copy

SENATE HIGHWAYS

EXHIBIT NO. 8 a

DATE February 2, 1993

BILL NO. SB 219

Requested by Senator Cecil Weeding
For the Committee on Highways and Transportation

Prepared by Dave Bohyer
January 29, 1993

1. Title, line 7.
Strike: "OR PROVINCE"

2. Page 1, line 19.
Strike: "or province"

SENATE HIGHWAYS

Amendments to Senate Bill No. 219
First Reading Copy

EXHIBIT NO. 86

DATE 2/2/93

BILL NO. SB 219

Requested by Senator Cecil Weeding
For the Committee on Highways and Transportation

Prepared by Dave Bohyer
January 29, 1993

1. Title, line 8.

Following: "STATIONS;"

Insert: "ESTABLISHING STAFFING REQUIREMENTS AT JOINT WEIGH
STATIONS;"

2. Page 1, line 25.

Following: "department."

Insert: "At least one-half of the personnel employed or appointed
by the department for the purpose of enforcing the gross
vehicle weight statutes at a joint weigh station facility
must be Montana residents."

SENATE HIGHWAYS

EXHIBIT NO. 8 c

DATE 2/2/93

AMENDMENTS TO SB 219

BILL NO. SB 219

Page 1, Line 25,

Following: "department."

Insert: (2) Existing motor carrier services officers will not be terminated as a result of entering into joint weigh station agreements.

Amendments to Senate Bill No. 219
First Reading Copy

SENATE HIGHWAYS
EXHIBIT NO. 8d
DATE 2/2/93
BILL NO. SB 219

Requested by Senator Cecil Weeding
For the Committee on Highways and Transportation

Prepared by Dave Bohyer
January 30, 1993

1. Title, line 8.

Following: "STATIONS;"

Insert: "PROVIDING JOB PROTECTION FOR JOINT WEIGH STATION
EMPLOYEES;"

2. Page 1.

Following: line 25

Insert: "

NEW SECTION. Section 2. Protection for joint weigh station employees. A Montana resident employed by the department of transportation on October 1, 1993, for the purpose of enforcing the gross vehicle weight statutes at a joint weigh station facility may not be replaced by a nonresident."

Amendments to Senate Bill No. 198 DATE February 2
First Reading CopyBILL NO. SB 198Requested by Jim Beck, Department of Transportation
For the Committee on Highways and TransportationPrepared by Jim Beck and Dave Bohyer
January 29, 19931. Page 1.

Following: line 18

Insert: "(1) "Federal-aid highway funds" means those funds made
available for expenditure by the department pursuant to
Title 23, U.S.C."

Renumber: subsequent subsections

2. Page 6, lines 6 and 7.Following: "necessary" on line 6Strike: the remainder of line 6 through "duties" on line 7

Insert: "for its government"

3. Page 12, line 18.

Following: "of"

Strike: "construction"

Insert: "federal-aid highway"

4. Page 13, line 6.

Following: "available"

Strike: "state construction"

Insert: "federal-aid highway"

5. Page 13, line 9.

Following: "available"

Strike: "state construction"

Insert: "federal-aid highway"

6. Page 13.

Following: line 20

Insert: "(5) To the extent necessary to permit the orderly
programming and construction of projects, obligations in any
financial district may exceed the amount apportioned to that
district by up to 25%. The amount of excess obligations
must be deducted from future apportionments to that
district."7. Page 17, lines 9 and 10.Strike: "and [section 4]"8. Page 17, line 20.Strike: "and [section 4]"

DATE February 2, 1993

SENATE COMMITTEE ON Highways & Transportation

BILLS BEING HEARD TODAY: SB 255, HB 170

Name	Representing	Bill No.	Check One	
			Support	Oppose
George H. ...	SP 12	255		✓
Leonard Lumbly	Self	255		X
Barry Rice	MSGA, Self	255	X	
Wayne Budd	MPSC	255	✓	
Bill Sheets	AMAA	170	✓	
Carla Torgerson	MSGA/MWGA	255	✓	
John Semple	AMAA	170	✓	
Mike Ferguson	^{MOT} Aeronautics Div	170	✓	
David Owen	Int Chamber of Commerce	^{HB} 170	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY