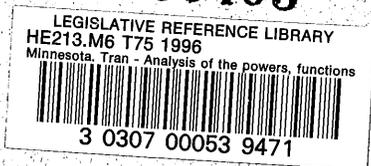


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ANALYSIS

of the Powers, Functions and Duties of

THE TRANSPORTATION REGULATION BOARD

A REPORT TO THE MINNESOTA LEGISLATURE

PRESENTED BY

The Transportation Regulation Board

**Richard Helgeson, Chairman
Lyle G. Mehrkens, Board Member
Timothy S. Perry, Board Member**

February 1, 1996

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Pursuant to 1995 Minn. Laws Chap. 265
Art. 2 Sec. 4; 1995 Minn. Laws Chap.
248 Art. 7 Sec. 1

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Douglas Bester, Bester Bros. Moving & Storage Co. - Chair of Household Goods Subcommittee
Leonard J. Huberty, Walco Transport, Inc. - Chair of Freight Subcommittee
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INTRODUCTION

BACKGROUND:

The Federal Aviation Administration Authorization Act of 1994 was signed into law on August 23, 1994. This legislation restricted the States ability to regulate certain economic aspects of the trucking industry, but left them the ability to regulate safety, insurance and other non-economic areas.

On December 23, 1994 the Board issued a Declaratory Order to help define what regulations still applied in Minnesota under our current statutes and what action a carrier had to take in order to operate a truck within Minnesota.

Basically the order stated that any motor carrier, not presently holding authority, that desired to operate as an intrastate carrier (within the borders of Minnesota) needed to complete and file an application form, along with a \$150.00 non-refundable filing fee, with the Minnesota Dept. of Transportation's Office of Motor Carrier Services. The Board would then review the application and grant or deny the permit based on the carriers safety fitness and ability to obtain and maintain insurance. After the Board grants the permit, the carrier must obtain a "cab card" by registering the vehicles operating in the State and to have their insurance company make a filing with the Dept. of Transportation. The preemption eliminated the requirement that a carrier had to prove there was a public need for the services to be offered in order to be granted authority and it eliminated the need to file rates. The order went on to state that carriers presently holding intrastate authority to transport freight need not do anything additional at this point, other than to keep their insurance and cab card registrations current. If the old authority was limited to certain commodities, geographic areas, or named shippers those limitations were automatically removed as of January 1, 1995.

During the 1995 session two bills were introduced in an attempt to bring state laws into compliance with the federal preemption. Neither suggested methods were passed. Instead the Legislature directed the Board to conduct a study of its powers, functions and duties and return in the 1996 Session with a recommendation as to the elimination of unnecessary functions and the possible transfer of any remaining functions to an appropriate agency. Also, in response to a suit filed by the American Trucking Association (ATA), the Legislature eliminated the cab cards for freight carriers.

LEGISLATIVE MANDATE FOR STUDY:

The directive for the study is contained in Minnesota Statutes, Act of June 1, 1995, Ch. 265, Art. 2, Sec. 4, 1995 Laws, 2024 and Act of June 1, 1995, Ch. 248, Art. 7, Sec. 1, 1995 Minn. Laws, 1579. The wording in Chapter 265 basically duplicated those contained in Chapter 248.

Chapter 248, Article 7, Section 1 & 3 stated in relevant part as follows:

Sec 1: ... the board, in cooperation with the commissioner of transportation, the center for transportation studies, and the legislative auditor, to conduct a study of the transfer of powers, duties and functions of the board to an appropriate agency. The study must include (1) which powers of the board should be eliminated, and (2) the relocation to other agencies of those powers of the board that should be retained. In conducting the study, the board shall establish and consult with an advisory committee that includes, but is not limited to, representatives of for-hire and private trucking, including household goods movers; railroads; representatives of for-hire and private passenger carriers, including limousines and personal transportation consumers; and members of legislative committees and divisions that are responsible for transportation policy or funding. The board shall submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

Sec 3: ... The transportation regulation board is abolished July 1, 1996, provided that a law is enacted transferring the remaining functions of the board.

METHODOLOGY:

The Transportation Regulation Board had a very short time frame to accomplish its mandated task - seven months total, from June 1, 1995, until February 1, 1996. After enactment, the Board immediately initiated contact with the other agencies named in the legislation. The Board caused to be mailed a notice to all motor carriers and interested parties in the state for participation in the process. This included solicitation for membership to study subcommittees. The Board basically assessed all its regulatory functions and divided them into four groupings: Freight, Household Goods, Passengers and Railroad. After review of the applications, the board appointed 15 members to each of the four subcommittees and an Industry oversight panel - thus totalling 85 members.

The Board then met and consulted with its Legislative Advisory Committee on August 10, 1995, to outline the progress to date and the direction of the study for their input and consideration.

The four subcommittees met in earnest during the months of September through December 1995, concluding in the early part of this year. The Departments of Transportation and Public Safety actively participated in the process as indicated by the chronological study timeline attached hereto. The Office of the Legislative Auditor, in a letter to the Board dated June 14, 1995, stated the role of his office must be limited, advising the Board on process, but not substance of the study. The Board felt that the cooperation of the University of Minnesota, Center for Transportation Studies ("CTS") could be best utilized in conducting a written questionnaire-type survey of present, authorized freight, household goods and passenger carriers. This idea did not draw support from the assigned subcommittees of these regulated carriers. In fact, they individually requested the Board to dispense with a survey and channel the CTS efforts in this study into conducting public meetings to receive reactionary input to the subcommittee final recommendations. Due to these sentiments and time restraints in effectuating an accurate and concise survey, the Board determined this suggestion to be its best course of action.

PUBLIC MEETINGS:

The Board held five public meetings in January of this year under the auspices of the CTS to solicit public input regarding the recommendations put forth by the various subcommittees. Timeliness of these meetings also fell victim to the uncertainty and tardiness of the pending federal legislation. These meetings were held in Moorhead, Duluth, Rochester, Marshall and the Capitol in St. Paul. The findings of these meetings will be a subject of a separate report under current preparation by the CTS which will be forwarded to the Legislature within a matter of a few weeks.

RECENT FEDERAL ACTIONS AFFECTING BOARD'S STUDY:

The subcommittees and the Board, in reaching its final conclusions, had to assess the remaining functions that had not been federally preempted. Adding difficulty to this was the fact that during the course of the study, further federal legislation in this area was pending and not signed into law until December 30, 1995, with enactment of the Interstate Commerce Commission Termination Act. The full impact of this legislation is presently being analyzed by the Attorney General assigned to the Board. It would appear that the majority of the new federal preemption related to rail common carriers. In addition, as in the case of the Federal Aviation Authorization Act of 1993, the possibility exists of constitutional challenges to the new law.

CONSIDERATIONS OF THE BOARD

In making its deliberations, the Board took many factors into consideration. Because of the unique circumstances involving the various types of transportation, the Board looked at each industry separately and at some issues that were common to all types.

FREIGHT CARRIERS:

The primary issue for the Board to consider, related to freight carriers, was whether the present system of entry regulation (issuance of licenses or permits) should be retained and, if so, what agency should oversee those regulations.

The federal government has already taken great steps to remove the State's oversight of this industry by the passage of the Federal Aviation Authorization Act of 1994, the Transportation Industry Regulatory Reform Act of 1994 and the Interstate Commerce Commission Termination Act of 1995. These Acts have essentially deregulated this industry and prevent the State from performing any economic regulation, except in specified areas. The Board, in response to the federal preemption, and by its Order dated December 28, 1994, created a regulatory system where the entry of new carriers into the marketplace was determined by a safety/fitness standard. The applications were still processed in the same manner as before the preemption and were subject to protest by interested parties. The protests were limited, however, to safety issues.

The Board examined its functions and duties in connection with motor carriers of freight and considered the effects of removing or amending those functions.

The Board's advisory subcommittee for this industry stated that the existing regulations are obsolete and serve no useful purpose, given the federal preemptions. The subcommittee did, however, express a concern that the State not give up the safety and fitness standards and that those standards be maintained through the oversight of the Dept. of Public Safety.

In opposition to the subcommittee's position, Mr. Robert Riley of Manning Transfer Services, a member of the subcommittee, wrote a dissenting opinion. In this opinion, Mr. Riley expressed that the state has an obligation to provide for the protection of the public in transportation of freight. He also stated that, if there is to be a standard of entry, an independent tribunal should be used to make the determination. The decision should not be an administrative function. Mr. Riley felt that the present system was the best method of screening entrants into the marketplace.

The Board's Industry Oversight Advisory Committee, in a split vote decision, voted to reject the subcommittee's recommendation

and support the minority position.

During the period since January 1, 1995, the Board has processed approximately 550 applications for authority. Of these applications, all except 4 were approved. In making its decision on the applications, the Board relied heavily on protests and the applicant's U.S. D.O.T. safety rating. In reality, most of the applicants were new carriers that had no history of operations to determine the safety/fitness of the carrier. Very few applications were protested. The Board was forced to make a finding based on a lack of showing that the applicant was unsafe, rather than a finding of the carrier to be safe. This would tend to support the subcommittee's position that the regulatory scheme in place for freight carriers is superficial.

The Board does agree, however, that the State should retain some system that would prevent an unsafe operator, or an operator that cannot provide adequate insurance coverage, from operating in intrastate commerce. This could be accomplished by requiring carriers to register on a form that would require basic information about the applicant. The registered carrier could then be subject to random or periodic safety reviews in order to help assure the continued safe operations of the carrier. The process could be administered by either Mn/DOT or the Dept. of Public Safety. This registration could be denied if there is an indication of unsafe operations or lack of insurance. Likewise, the registration could be revoked for the same type of findings.

This type of simplified registration system received strong support from the participants at the public meetings conducted by the Center for Transportation Studies. There was little or no support for the existing system at these meetings.

In a side issue, the Board had to consider whether it should recommend the continuation of the State's policy on collective rate making in connection with joint-line rates, mileage guides and classifications. The Board's subcommittee, by a vote of 7 to 5, recommended that the present policy be continued. The federal legislation specifically provides that the State may regulate in this area if it is requested to do so by the carrier and if the State regulation is no more burdensome than the federal regulations.

According to comments made from the public at the Board's deliberation meeting on January 19, 1996, there appeared to be some concern on the part of the shipping public. These concerns were expressed by Mr. Bruce Hocum of Samuel Rubenstein Freight Transportation Consultants, Inc., that the carriers would not be able to use the present classification system if the State were to repeal its present laws in this area. The classification is currently used by a majority of the carriers performing less than truckload services for the rating systems and packing requirements

of those movements. Without the anti-trust protection provided under the present laws, a carrier could not, and would not, use a collectively made document. This would destroy a system relied upon in the industry and create great confusion until an alternate system could be established. Mr. Holcum is a consultant that represents both shippers and carriers in these matters.

In making its deliberation, the Board received advice from its legal counsel. Counsel confirmed the position stated by Mr. Holcum. In a memorandum to the Board dated January 3, 1996, Counsel stated that:

"The state's laws on collective rate making for joint-line rate and freight classifications are not preempted under both the current statute and the Interstate Commerce Commission Termination Act of 1995. However, for the state laws to immunize motor carriers who engage in the process, there must be state law which clearly articulates the state policy to permit the carriers to engage in this behavior as part of a state regulatory plan, and there must be active supervision of that policy by a state agency. Additionally, that state regulatory regulation cannot be more burdensome than the federal legislation on the same subject, and the state regulation must be specifically requested by the motor carrier who wants to participate in the collective rate making."

The argument was raised that the federal government is already providing the supervision, therefore, the state should not need to duplicate the process. This is a false assumption, and has been addressed by the courts. The federal immunity is only granted on interstate commerce. In order for a carrier to use the state's policy as a defense against antitrust litigation in intrastate commerce, the state must provide active supervision of the collective action.

RAIL:

The review of the rail duties and functions of the Board were particularly difficult. Certain functions in connection with rate regulation were clearly preempted by federal law. However, some of the matter fell into a grey area. The Board's subcommittee tried to address the task before them, but often found themselves unable to come to a consensus.

The areas of regulation left for the state to consider deal primarily with safety. The Board has a great concern that the safety standards presently in place are not repealed in haste or by mistaken interpretations of the law.

The federal government just recently passed the Interstate Commerce Commission Termination Act. The full effects of this

legislation are not yet known. The Board believes that the best approach is one of caution.

Looking specifically at the issues the Board believes to be under state jurisdiction, the consideration must be focused on the appropriateness of the regulation and the agency best suited for the administration of those regulations. Some of the issues considered by the Board were:

(1) **Grade Crossing Improvements and/or Closing.** This issue was heavily debated by the rail subcommittee. Generally, the rail subcommittee members agreed that this function should be retained. There was some disagreement as to what agency should oversee the function. Mn/DOT currently is charged with establishing the standards for rail crossings. They are also the investigator and enforcer for those standards. The rail unions argued that there would be a conflict of interest if they should also become the final authority on the issue of improvement or closing of a crossing. The conflict of interest broadens further when one considers that Mn/DOT is also one of the potential road authorities having jurisdiction over the roadway involved in the crossing. These functions originally were handled by Mn/DOT but were transferred to the Board when it was created. On December 17, 1982, Richard Braun, DOT Commissioner at the time, wrote a letter supporting the establishment of the Board. In that letter he states that "conflicts exist within Mn/DOT when the Commissioner must act as both judge and advocate. He must regulate, enforce and adjudicate;"¹

(2) **Petitions for variances in vertical and horizontal clearances.** Again, the subcommittee members agreed that the function should remain. However, the same conflict of interest issues are present here as with the grade crossings. Mn/DOT acts as the enforcer and public advocate in these matters;

(3) **Agency closing.** This is one of the grey areas that must be further examined to determine the extend of the federal preemption. Rail unions and shippers recognized that there may be some potential benefit to retaining these regulations; and

(4) **Right of first refusal for sale of property within right of way.** The subcommittee reported that this issue is important to shippers and it is believed that the function should be retained.

During the Board's update report to the House Transportation Committee on January 17, 1996, Reps. Winter and Kalis expressed

¹ Letter of Richard Braun, dated December 17, 1982, addressed to Ray Bohn in the Governor-Elect's office.

concern that the federal preemption contained in the new legislation could cause potential hardship for the shippers in rural Minnesota and left them no forum in which to express their concerns. The Board has reviewed the matter and believes that the potential for abuse does exist and that a system should be established whereby the state agency could act as an advocate for the public interest in these matters. With this system in place, the state would not be able to make the final determinations, but would be able to press the matter before the proper federal jurisdiction.

In its deliberations, the Board considered the comments expressed during the subcommittee meetings and in the subcommittee report. The Board believes the best solution at this point is to make minimal changes, repealing only those provisions that are determined to be obsolete or are expressly preempted.

PIPELINE CARRIER:

Minn. Stat. Chapter 221.54 and 221.55 provides for the regulation of certain pipeline carriers. After consulting with the Dept. of Public Safety, neither the Board or the department could determine a need for the continuation of these functions. Mr. Ronald Weist, Chief Engineer with the Dept. of Public Safety's Office of Pipeline Safety stated, in a letter to the Board dated September 1, 1995, "all current pipelines we regulate are already exempt from this statute and we could not determine what future facilities the statute might affect." Because of this, the Board did not appoint a subcommittee for this industry, but rather accepted the comments from the department and the Board staff's research.

HOUSEHOLD GOODS AND PASSENGER CARRIERS:

COMMON ISSUES TO BOTH HOUSEHOLD GOODS AND PASSENGER:

Unlike the freight carriers, the federal government has not preempted the economic regulation of household goods or passenger carriers. The Board, therefore, had to consider all of the arguments, both pro and con, on the issue of regulation versus deregulation.

The philosophical reasoning behind the retention or abolishment of economic regulation depends mainly on your principal beliefs on the proper roles of government. Many studies have been conducted and a case can be made for both regulation and deregulation.

In their deliberation, the Board reviewed several of these studies. Although many of the comments are based on freight movements, parallels can be drawn to the household goods and

passenger industries. Some of the reports examined are:

"The Real World", How Deregulation Has Changed The Transportation Industry and Gross Common Carrier, Inc." a presentation made to the National Conference of State Transportation Specialists by Robert Wittenberg, Director of Commerce and Marketing for Gross Common Carrier, Inc.

"Intrastate Trucking Deregulation: Have Both the Negative and Positive Impacts Been Overstated?" by Benjamin J. Allen, T.H. Maze and Clyde K. Walter as published in the Fall 1993 Transportation Journal.

"Deregulation: A decade Later", Transportation Law Journal, 1988, Vol. 17

"Regulation/Deregulation Manual", Regulatory Study Committee of the Transportation Lawyers Association, February 11, 1992

"Analysis of Taxicab Deregulation/Re-regulation" by Price Waterhouse

"Adequacy of Intercity Motor Common Carrier Passenger Service", Interstate Commerce Commission, Ex Parte MC-95 (Sub 8)

"The Regulation of Passenger Services in Minnesota", Minnesota Department of Transportation, Office of Motor Carrier Services, report to the Minnesota Legislature, May 1993

As an example of the findings in these reports, the Transportation Law Journal, 1988, Vol. 17, in a report titled "Deregulation: A Decade Later", pages 81-83, provided a look at several states that had deregulated since 1980 and the studies those states had performed. A review of those studies showed that deregulation had created several problems. California's study appeared to be the most comprehensive. The report stated that:

"That study revealed that widespread discriminatory and preferential rate cutting created a situation in which the industry's infrastructure became over aged; for-hire carriers were no longer able to maintain vehicle replacement programs or acquire new equipment; adequate financing was no longer available to motor carriers; safety deteriorated, leading to increased numbers of deaths and injuries from highway truck-related accidents; there was a serious reduction in the number of independent owner-operators; and to offset the prevailing rate cutting, drivers operated excessive hours, maintained multiple log books, overloaded vehicles, drove at excessive

speeds and reduce expenses for equipment maintenance.²"

The Transportation Law Journal report went on to indicate that, as a result of the study, the California PUC issued a decision on April 16, 1986. In that decision, the PUC concluded that additional deregulation would not be in the public interest and published the following findings:

"It is the intention to provide a regulatory system which promotes the financial health of the industry, equity, competitive opportunity and public safety ... Although competition is not and never will be perfect ... one of the major objectives of the regulatory policy is to prevent competitive forces from becoming destructive... It is not our purpose to encourage carriers to offset losses though inadequate wages, poor vehicle maintenance or market instability. Further, if enough carriers engaged in sustaining underpricing, the industry as a whole would suffer, jeopardizing the provision of adequate, reliable service ... We also agree with the staffs' assessment that under the prevailing circumstances, total deregulation of the state's motor carrier industry is not appropriate."

Specifically addressing household goods and passengers, the Transportation Law Journal report indicated that complaints regarding service and consumer abuse escalated in a deregulated environment. Florida, during the year preceding deregulation received 34 complaints regarding household goods transportation, but received 44 complaints during the first month alone after the deregulation. Similarly, Arizona reported more complaints in the areas of household goods and taxicab services.

In a February 11, 1992, report prepared by the Regulatory Study Committee of the Transportation Lawyers Association it was stated that:

"These studies include the April, 1991, General Accounting Office ("GAO") report titled "Promising Approach for Predicting Carriers Safety Risks," U.S. Congress' Office of Technology Assessments ("OTA") "Gearing Up For Safety," the comprehensive January, 1991 report to the California Governor and Legislature titled "Status Report On Truck and Truck Driver Safety" and similar reports. The common findings in the studies indicate that the direct safety measures, road inspections and controls and safety audits, have caused a decline in the truck-at-fault fatal and injury accidents caused by mechanical defects which account for about 6% of these accidents. But, reportedly, they have little effect on

² Baker, 186 Update of Regulation of Motor Carriers By Individual States, 33 Your Letter Of The Law 28, 30-31 (Aug. 1986)

driver error which causes 94% of the injury and fatal accidents. The studies fix the blame for the accidents on "1) speed to fast for conditions; 2) level of training of drivers; and 3) age of vehicles;" "speed , unsafe lane changes, right-of-way violations, unsafe turns, following too close;" "lower-paid drivers were more likely than their higher-paid counterparts to violate safety regulations," and "younger and less experienced truck drivers were more likely to be in accidents." The GAO report also found that **current adverse economic conditions have resulted in lower wages, driver quality and safety compliance, a decline of management attention to safety practices, and deferred truck maintenance and replacement.**³ (emphasis added)

In addressing the concerns of a declining regular route passenger service in Minnesota, Mn/DOT Office of Motor Carrier Services reported:

"Some have argued that Minnesota might resolve these issues if passenger transportation services were deregulated. However, past experience has shown that deregulation may not provide a suitable answer. In 1982, interstate passenger bus services were largely deregulated by the Bus Regulatory Reform Act of 1982. Since then, several larger interstate bus companies have failed, or been acquired. Today, Greyhound Lines, Inc., remains as the only coast-to-coast interstate carrier, and in 1990 Greyhound filed for protection in federal bankruptcy court. The loss of carriers has resulted in the loss of adequate passenger services in some states:

"We have begun to look at the possibility of providing a new category of passenger service to complement and fill the gaps left by the interstate long-haul bus carriers now that they are no longer a presence in the Arkansas intrastate market place." (Arkansas's response to a survey question asked by Mn/DOT)

Even federal regulators are now questioning the results of deregulation. On March 5, 1993, the ICC announced that it will initiate a "...multifaceted and detailed study of the bus industry...concerned with not only how the Bus Act's reforms have affected the intercity bus industry, but also how the industry has responded to more recent developments.." (pages

³ Regulatory Study Committee of the Transportation Lawyers Association, Regulation/Deregulation Manual, February 11, 1992, pg. 4.

24-25)"⁴

In addition to the review of reports and studies, the Board contacted several states and listened to comments made at the five public meetings in order to gather further information and points of view on these issues.

HOUSEHOLD GOODS:

The Board's household goods subcommittee recommended the retention of the current regulatory system. The main concerns raised in their discussions dealt with the probability of consumer abuse and erosion of the industry as it exists today. The Household Goods Subcommittee did extensive research into what had taken place in deregulated states. Of particular note in their report were the states of Florida and neighboring Wisconsin relative to consumer complaints after deregulation. Their report found as follows:

"Over the last three years, the Florida Department of Agriculture and Consumer Services had catalogued over 1000 complaints with 457 directly related to transactions occurring wholly within the state's borders. During that same period, the Office of the Attorney General has accumulated reports on 315 separate consumer cases for which it estimates customer damages to be about \$200,000. There are reports from the states (New Jersey and Florida, and even the counties of Broward, Palm Beach and Dade Counties in Florida) attempting to enact even more onerous and punitive consumer protection regulations after periods of deregulation of the household goods moving industry.

The state of Florida outlined the following complaints relating to household goods carriers:

Types of Complaints:

1. Price Fluctuations - (low-balling)
 - a. Billing increases as large as 10 times the quoted price.
2. Non-delivery of items - (taking furniture hostage)
3. Inadequate loss coverage - (no or low replacement value)
 - a. Customer receive as little as \$15 for TV
4. Problems with claims

⁴ "The Regulation of Passenger Services in Minnesota", a report to the Legislature, May 1993, by the Minnesota Dept. of Transportation, Office of Motor Carrier Services.

5. Shipper liability exposure - (no workers compensation or general liability)
6. Problems with name identification - (close and re-open; cross-advertising)
7. Poor adjudicatory standing - (can't prosecute under unfair or any other law)
8. No clearinghouse for complaints

Recent reports from the Wisconsin Department of Justice reflect similar complaints in Wisconsin."⁵

The responses from Florida and Wisconsin would seem to confirm the findings in the Transportation Law Journal Report.

At the subcommittee meetings, members of the subcommittee also related another potential problem of deregulation. A carrier getting into trouble in a deregulated state merely dissolves the company having the problem and reappears under a new name. With our regulatory system, applicants are screened for their fitness. The protest system allows comments from interested parties that may be considered by the Board. This screening process greatly reduces the existence of a problem of this nature.

Three members of the subcommittee dissented from the majority report. It is their belief that the current economic regulatory system no longer serves a useful purpose. They point to the system in Wisconsin as proof that the regulations are not needed. The minority members concede, however, that there would be some benefit to the industry and consumers if certain basic remnants of regulation were codified into the statutes. It is their belief that no state agency need administrate or enforce that statute. The providers of the service would conform to the applicable regulations and enforcement would come from civil action before the courts brought by the consumer.

The Board considered the minority position and believes that their opinions are based on a false premise. The research done by the subcommittee members, in connection with the consumer problems in other states, indicate that the deregulated environment has not proven to be without its problems for the consumers. If fact, it would appear that consumer abuse problems escalate in a deregulated environment.

The household goods industry is unique to transportation. The users of the services are generally not accustomed to dealing with

⁵ "Report and Recommendations to the Transportation Regulation Board", Household Goods Advisory Subcommittee, November 21, 1995

motor carriers and are not aware of the proper methods of purchasing transportation in order to avoid potential abuses. Many times an individual will only use the services of a mover once in their lifetime. Most of the moves occur around the beginning or the end of the month. Many times the consumer will become what is known as a "captive shipper." For example:

A person's lease has been terminated and has been given a notice to vacate on a given date (or perhaps the person had no lease and the landlord just gave them a notice). At this point the consumer has no choice in the matter and must comply. They contact a mover to obtain services. Under our present regulated system, they would receive the same prices and services as any other person. However, under a deregulated environment, the potential for consumer abuse is great. If the date given by the landlord falls on the last part of the month, and a carrier is aware of the deadlines, the carrier could easily, and legally, assess any level of price that they wanted and this consumer, being desperate, would likely give in.

This type of market pricing is already in place for other modes of transportation. One need only look at the airlines and their pricing policy of one price for a 30-day notice and a second price, usually extremely high, for a short notice. This may or may not be fair for the consumer. Often their travel is either for business or pleasure, not a necessity. However, for a household goods move you are dealing with a persons home. For three years now the Legislature has heard bills to establish a binding bid process. Binding bids would not prevent this type of abuse.

The Board believes that traditional theories of supply and demand economics do not generally apply to household goods transportation. There is a finite base of consumers that will be using the services at any given time. Just because there are more carriers or cheaper prices it does not mean that a person will sell their home or move out of an apartment just to take advantage of those factors.

The Board believes that in order to provide safe, efficient and adequate services some system must be maintained that will create a stable industry and prevent abuse. If the Legislature should decide to deregulate the household goods industry, it would soon find itself having to deal with the many complaints that would likely follow and would have to consider establishing a new system to provide a level of consumer protection.

One subcommittee member summed up the feelings of the subcommittee members by saying "What's the problem? The present system is in place now and works fine. If it ain't broke don't fix it."

At the public meetings conducted by the Center for Transportation Studies, comments were received both in support and against the subcommittee position. By far the majority of the persons appearing supported the continuance of the regulations.

The Board's research has found that 41 states still require carriers to obtain a permit to engage in household goods moving and 36 states maintain rate regulation.⁶

PASSENGER:

Passenger services in Minnesota are constantly evolving and the Board recognizes that changes are will need to be made to keep pace with this evolution. Previous amendments to our statutes have been made to address the concerns of special interest groups or individuals. This has fragmented the industry, caused confusion for carriers and the users of the services and made interpretation of the statutes difficult. Furthermore, the federal government has, to some extent, preempted some of the states powers over certain passenger carriers.

The Board's passenger subcommittee spent many hours examining the current regulatory scheme. They debated the merits of regulation and deregulation. Their recommendation was to retain the current system of issuing permits and certificates based on need and limited in territory. The subcommittee's report states:

"Discussion regarding the territorial vs. functional permitting brought up a key factor of public interest vs. private interest. Territorial permitting allows for limited/closed entry into the marketplace, creating a monopolistic business sector. However, this system seems to work due to the limited/seasonal markets available to operators. There is only so much business to provide service to. These territorial rights allow for reliability of tariffs and consistency of regular route and charter services."⁷

These comments are supported by the findings in the Transportation Law Journal and the Transportation Lawyers Association reports. As stated earlier, those studies showed that deregulation allowed more carriers into the marketplace and reduced revenues. This, in turn, led to conditions compromising the safety of the carriers.

⁶ "Transportation Regulatory Policy in the United States and Canada", Annual Compilation 1993-1994, by the National Association of Regulatory Utility Commissioners

⁷ "Passenger Subcommittee Report", Transportation Regulation Board Subcommittee on Passengers, December 1995.

The Board believes that when a person, or group of persons, hires a passenger carrier they expect that carrier to provide safe service, have adequate insurance and will perform service in an ethical manner. The state, we believe, has an obligation, at a minimum, to assure the safety of those carriers providing service and to see that there is adequate insurance coverage.

Beyond that the Legislature will have to consider whether they have any accountability to the existing operations and what the effects would be if the regulatory system is changed. The Board believes that, if there were an instant removal of all entry regulation, the flood gates would be open and the marketplace would soon be over saturated. One need only look at the freight carriers. As we reported earlier, after the ease of entry on January 1, 1995, 544 applications were approved. This would greatly harm the existing carriers currently meeting the public traveling needs. If the Legislature believes that it is in the best interest of the public to provide an ease of entry into the passenger business, a better approach might be a gradual removal of some of the entry barriers. For example, the state could begin with changing the burden of proof for entry. Instead of the applicant proving need, a protestant would have to show that the granting of the authority would not be in the public interest or that it would have a significant adverse impact on the operations of the protestant and impair their ability to provide a substantial portion of their operations. This system removes the costs and burdens from the applicant and places them on the carrier opposing the applicant. If there is no adverse effect on the industry because of this change, the Legislature could then consider further changes.

The passenger subcommittee also looked into reforms they felt should be examined.

One of the recommendations was to create a system of self-policing for the economic regulations. Carrier would be able to bring complaints directly before an Administrative Law Judge, who would make a final and binding decision in the case. The costs for the proceedings would be shared by the two parties. The Board considered this. Where it is true that most complaints are filed by a competing carrier, it does not mean that the complaining carrier should bear the cost of enforcement actions or do the work of the enforcement agency. To paraphrase a comment made at one of the public meetings, a person that calls to report a robbery should not have to bring the criminal to trial. The Board also believes that this system could be used in a predatory way. If a large carrier wants to hurt a smaller competitor they need only bring a number of actions against that carrier, creating an undue and costly burden that could destroy the smaller carrier's financial resources. If a carrier believes there is not effective enforcement action being taken on a matter complained about, the present statutes provide a method for the complainant to press the matter before the Board for a hearing (Minn. Stat. §221.293)

Another recommendation was to remove those regulations that require the tariff rate to be the only rate charged and replace them with a system where the tariff was the minimum charge of the carrier. The subcommittee members felt this would provide greater flexibility in pricing. This method would retain a certain level of prevention against predatory pricing. The Board can see the benefits of flexibility in pricing. During certain "off-peak" times it might be possible for a carrier to have a lower rate or, in the reverse, a higher rate to cover the cost of leasing additional vehicles during a period of high demand for service. However, the Board has concerns about possible discriminatory and abusive pricing. The current regulations are not only designed to protect the carrier from predatory action, but they also are to prevent discrimination and abusive/excessive prices. There may be some merit to considering the establishment of a system that allowed a certain maximum deviation or percent of variance (plus or minus) from the filed rate (a so called "zone of rate freedom"). This would have to be given further consideration before the change could be recommended.

OTHER ISSUES RAISED BY BOARD SUBCOMMITTEES:

In the household goods, freight and passenger subcommittee there was a concern that the present method of enforcing and administrating the current regulations was inefficient and ineffective. Their recommendation, in all three subcommittees, was that the functions of Mn/DOT Office of Motor Carrier Services be transferred to the Dept. of Public Safety, along with the appropriate support staff.

The findings of the subcommittees were very general. They were more of an expression of desire rather than a researched recommendation. Many times the basis for the finding was tied directly to a frustration on a perceived lack of economic enforcement by the Office of Motor Carrier Services. The household goods and passenger subcommittees also referred to an organizational chart for the Office of Motor Carrier Services that appeared to be "top heavy" in the area of supervisors. It was also perceived by the subcommittees that many of the duties were duplicative of the State Patrols duties and that the state would benefit greatly from the merger of these two departments.

At the public meetings there was an overwhelming desire expressed by the participants for a "one-stop" agency where they could get all services and answers dealing with transportation.

The Board considered the recommendations and comments on this issue. The sentiment does not appear to be unique to Minnesota. Members of the Board staff recently attended the National Association of State Transportation Specialists annual meeting in Whitefish, MT. During the business meeting the representatives from

the individual states gave a report on the changes occurring in their state. Those reports indicated that 15 of the 38 states in attendance were going through a transfer of duties or department reorganization for efficiencies and easier accessibility to the public.⁸

The Board does not believe that the issue has been fully explored and is therefore premature. There is no data collected on the projected cost saving benefits realized by such a merger. Likewise there was no plan or methodology as to the physical transference of the assets, personnel and functions. The various collective bargaining units representing the agencies should also be consulted to determine if any problems are created from their point of view.

The Board does, however, believe that the issue bears a close examination. The concept of a "one-stop" facility could be of great convenience to the citizens requiring service. Although the Board has not been asked to be involved, it is our understanding that Mn/DOT and the Dept. of Public Safety have already begun exploring the possibilities of sharing information and resources. This could be the beginning for an eventual existence of the "one-stop" shop.

⁸ "State by State Report", a synopsis of the presentations made at the National Association of State Transportation Specialists in Whitefish, MT, June 18-22, 1995, prepared by Timothy S. Perry.

CONCLUSIONS AND RECOMMENDATIONS

The Board, in its review of the four subcommittee reports, found them to be comprehensive, logical and well reasoned. The Board, in its deliberation to formulate the mandated legislation, for the most part, adopted the subcommittee reports with few exceptions. The most notable exception was to reject that portion of the Industry Advisory Committee's report that would reverse the recommendations of the Freight Subcommittee.

At its meeting on January 19, 1996, the Board took action on the recommendations of its subcommittees.

The Board determined that the existing system for freight carriers had served its useful purpose and a simplified system with federal safety standards and safeguards, under the administration of the Department of Transportation, should be implemented. It also concluded that the state's current statutes regarding collective rate making should be retained.

Because of the uncertainty of the extent of the new federal legislation, the Board determined that the best approach would be to repeal those provisions that have been clearly preempted by the federal legislation or that all members of the subcommittee had recommended be repealed. Also, because of the "conflict of interest" concerns raised by the rail unions the Board recommends, at this time, that the functions be conducted by a body independent of Mn/Dot Railroads and Waterways Division.

The Board found no compelling reason(s) to recommend deregulation of household goods and passenger carriers. In fact, the findings indicated that the present regulatory system was in the public interest. The subcommittees did a thorough job of receiving public input regarding the reasons to continue the present system.

After factoring in its remaining statutory functions, the Board arrived at the final conclusion that it could best serve the public and this regulated clientele by establishment of a new entity with part-time Board members operating with a reduced complement of staff under the Department of Public Safety for administrative support.

The Board prepared drafted language for proposed legislation. Attached to this report is a summary of that proposed language and details the proposed changes to the statutes.

The Board is of the opinion that its recommendations and legislation are consistent with this report and the findings of this study. The proposed legislation, in many ways, parallels what is taking place on the federal level.

The Board, in its deliberations, factored in that the concept of "regulation" is in a state of flux and will undoubtedly be subject to further change. The Board would anticipate that this concept will eventually evolve into consumer protection. A prevailing theme during the Board's study was the desire of motor carriers for a single, cohesive agency for registration, regulation and enforcement. This legislation is a good first step to that end. It is hoped that the legislature will continue this initiative to further streamline the process for the benefit of the public, and consolidate safety-related responsibilities of motor carriers, thereby eliminating confusion and redundancy.

SUMMARY OF PROPOSED LEGISLATION

Amendment to MS Section 15A:

- (1) Removes the salary ranges for the Transportation Regulation Board.

Amendment to MS Section 174A:

- (1) Establishes a MN Surface Transportation Board within the Dept. of Public Safety with independent decision making powers. The members appointed to the Board are compensated at 1/2 the rate of a PUC Commissioner.
- (2) Establishes defined qualification for Board members
- (3) Sets expiration date for the terms of present TRB Board members
- (4) Empowers the Board to act in the public interest before the federal Dept. of Transportation.

Amendment to MS Section 218

- (1) Defines "Board" as the new MN Surface Transportation Board
- (2) Repeals statutes regarding rate/pricing filing requirements and regulation

Amendment to MS Section 221

- (1) Misc. technical changes and additions to definitions
- (2) Repeals current system of issuing permits and certificates for freight carriers
- (3) Repeals exemptions for freight carriers. This will require formerly exempt for-hire carriers to file insurance and register with MN/DOT
- (4) Provides that applications for regular route passenger, charter and household goods movers be filed directly with the Board
- (5) Repeals tariff filing requirements for freight carriers. This power was preempted by federal law.
- (6) Establishes federally conforming requirements for interstate regular route bus operators operating in intrastate commerce using their federal authority.
- (7) Establishes new registration system, with DOT, applicable to for hire motor carriers of freight. This system will replace former certificates and permits.
- (8) Removes DOT Commissioner's ability to require cargo insurance for freight carriers. Preempted by federal law.
- (9) Repeals restriction that prevents an existing permit carrier from purchasing the permit of another carrier
- (10) Misc. technical changes to statutes to remove economic regulation over freight carriers
- (11) Repeals 221.54 and 221.55 (Board regulatory powers over pipelines)

MISC. PROVISIONS

- (1) Requires the Dept. of Transportation, Dept. of Public Safety & the MN Surface Trans. Board to develop a plan to reorganize state services related to the regulation/registration of transportation entities and the enforcement of those regulations. The goal being to provide a unified, or "one-stop" environment. Plan to be submitted to the legislature by Feb. 1, 1997.
- (2) Establishes appropriations for the new Surface Transportation Board
- (3) Provides for the transfer of technical personnel and assets of the TRB to the new Board.

STATUTORY REFERENCES (TRB)

**Minn. Stat. Chapter 174A
Transportation Regulation Board**

**Minn. Stat. Chapter 221
Motor Carriers**

**Minn. Stat. Chapter 218
Common Carriers, Rail Transportation**

**Minn. Stat. Chapter 219
Railroads**

**Minn. Stat. Chapter 222.631 - 222.633
Railroad Property, First Refusal**

**Minn. Rules Chapter 7800
Motor Bus and Truck**

**Minn. Rules Chapter 7805
Motor Carrier Administration**

**Minn. Rules Chapter 8830.3600 - 3700
Rail Carrier Abandonment of Agency or Custodian Service**

**Minn. Rules Chapter 8830.3800 - 3900
Railroad Tariffs**

**Minn. Rules Chapter 8900
Transportation Regulation Board Motor Carrier Ratemaking**

**Minn. Rules Chapter 8910
Transportation Regulation Board Railroads, Right of First Refusal**

**Minn. Rules Chapter 8920
Transportation Regulation Board Administrative Practice and Procedure**

Board authority is encompassed in five chapters of Statutes and seven chapters of Rules.

EXHIBITS:

Study Timeline

Public Mailings

**List of Committee/Subcommittee Members and
Committee Charges**

Committee/Subcommittee Reports

**State By State Report, a synopsis of the
presentations made at the National Association
of State Transportation Specialists in Whitefish,
MT, June 18-22, 1995, prepared by Timothy S. Perry**

Copies Attached:

Mailings, names of committee members, committee charges, committee reports and designated agency contacts.

STUDY TIMELINE

Mass Mailings

06/29/95 Initial mailing to all Mn/DOT registered carriers and interested parties notifying them of TRB study and requesting volunteers to serve on the various committees

10/05/95 Requests for comment/opinion on study issues sent to all Mn/DOT registered freight carriers (2786 sent, 26 responses)

10/12/95 Requests for comment/opinion on study issues sent to all Mn/DOT registered household goods carriers (210 sent, 11 responses)

12/27/95 Notice of Public Meetings sent to all Mn/DOT registered carriers, newspapers and interested parties

Committee Meetings

Twenty-seven committee meetings were held between 8/10/95 and 12/19/95. The dates of each committee meeting are as follows:

Legislative Advisory Committee - One meeting

8/10/95

Industry Advisory Committee - Three meetings

9/20/95; 12/12/95; 12/19/95

Passenger Subcommittee - Six meetings

9/12/95; 9/28/95; 10/11/95; 10/18/95; 10/25/95; 11/1/95

Household Goods Subcommittee - Five meetings

9/19/95; 10/3/95; 10/10/95; 10/17/95; 11/11/95

Freight Subcommittee - Five meetings

9/22/95; 10/4/95; 10/18/95; 11/1/95; 11/15/95

Rail Subcommittee - Seven meetings

9/26/95; 10/2/95; 10/9/95; 10/16/95; 10/24/95; 10/30/95; 11/20/95

Letters were sent by the Board to the states of Florida, Wisconsin, Maryland and New York at the request of subcommittees requesting input from deregulated environments. Responses were received from Florida, Wisconsin and New York.

Presentations by Designated Agencies

Presentations made to subcommittees by Betsy Parker, Mn/DOT, Office of Motor Carrier Services, are as follows:

09/28/95 - Passenger Subcommittee
10/11/95 - Passenger Subcommittee
10/17/95 - Household Goods Subcommittee
10/18/95 - Freight Subcommittee

Presentations made to subcommittees by the Department of Public Safety are as follows:

10/10/95 - Major Dennis Lazenberry - Household Goods Subcommittee
10/11/95 - Duane Bartels - Passenger Subcommittee
10/18/95 - Lt. Michele Tuchner - Freight Subcommittee

Public Presentations and Participation in Subcommittee Meetings

Passenger Subcommittee - Presentations

Leo Moran - Brainerd Bus
Sonny Nord - Minnesota Charter Bus Operators Association/Red River
Larry Bakken - Vice President, Norwest Insurance Broker
Abe Rosenthal - President, Minnesota Transport Services Association
Cheryl Offerman - Minnesota Department of Tourism

Freight Subcommittee - Presentations

Lisa Peterson - Minnesota Trucking Association
Abe Rosenthal - President, Minnesota Transport Services Association

Rail Subcommittee - Participation

Bob Zelnick - Elevator Association of Minnesota
Tom Cashman - Northwest Agri-Dealers
W.C. Jorde - BMWF-C&NW System Federation
Larry Long - CP Rail Public Relations
Karl Knutson - Brotherhood of Maintenance Way of Employes

Household Goods -

The following consumer groups were contacted, but declined to participate:

AAA
Renters Union
Better Business Bureau
Legal Aide Society

Outstate Meetings

Five outstate meetings were held for public input to the committee reports and the findings and recommendations of the Board. Each meeting averaged between 10-20 parties of interest. The dates and locations are as follows:

1/08/96 - Moorhead, MN
1/09/96 - Duluth, MN
1/11/96 - Rochester, MN
1/16/96 - Marshall, MN
1/18/96 - St. Paul, MN

Updates

All mailings, minutes, reports and other pertinent correspondence were sent to the parties listed below as the information was made available to keep everyone current on the progress of the committees and the study:

Legislative Advisory Committee
Legislative Staff
Industry Advisory Committee
Governor's Office - Tom Weaver

Designated Agencies -

Mn/DOT, Office of Motor Carrier Services - Betsy Parker
Department of Public Safety - Major Dennis Lazenberry
Center for Transportation Studies - Robert Johns
Legislative Auditor - Joel Alter



TRANSPORTATION REGULATION BOARD
STATE OF MINNESOTA

(612) 296-0400

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June 29, 1995

IMPORTANT CHANGES THAT COULD AFFECT YOUR AUTHORITY

NOTICE TO ALL CERTIFICATE AND PERMIT HOLDERS

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include (1) which powers of the Board should be eliminated and (2) the relocation to other agencies of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

It is the intention of the Board to gather information for the study through the use of surveys, focus group meetings and reviewing previous studies involving the transportation industry that have recently been conducted. Over the course of this summer, you should be receiving further communications advising you of upcoming meetings or requesting you to provide information. These notices and requests may come from the Board, the Center for Transportation Studies or another one of the participants named above.

During the course of this study, the Board will also be establishing an advisory committee made up of representatives from for-hire and private freight carriers, household goods movers, passenger carriers (including personal transportation and limo operators) and members and staff from the legislature. If you desire to be considered for appointment as a member of this advisory, or if you wish to recommend someone, please send a written statement to the Board indicating your desire for consideration and outlining your qualifications for such appointment.

Any change in the current regulations could have a major effect on your business. It is therefore extremely important that the Board has input from you during this study. We would appreciate a timely response to any request for information that you may receive. The Board would also encourage you to submit any written comments or feelings on this subject for consideration during this study.

Yours truly,

Lyle Melniker Vice Chair For
Richard Helgeson, Chairman



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STATE OF MINNESOTA

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(612) 296-0400

IMPORTANT

October 5, 1995

To all Motor Carriers of Property:

As stated in our letter of June 29, 1995, the Board was directed by the 1995 Legislature to conduct a study of what powers, functions and duties of the Board should be retained and the transfer of those powers, duties and functions of the Board to an appropriate agency.

The Board has established a Freight Advisory Subcommittee to assist them in the completion of this study. This subcommittee has been charged with performing a comprehensive review of the statutes as they pertain to the transportation of property, other than household goods, and report it's findings and conclusions accordingly. Specifically the subcommittee will be reviewing the following Board functions:

1. Issuance of authority (permits) based on publication of application, input of protestants (if any) and safety/fitness findings. (Minn. Stats. §221.061, 221.071, 221.072, 221.121 & 221.296)
2. Supervision for collective rate organizations (antitrust) in connection with joint line rates, mileage guides & classifications. (Minn. Stat. §221.165)
3. Review of suspensions issued by Mn/DOT for lack of insurance & reinstate authority based on compliance. (Minn. Stat. §221.185)
4. Preside over show cause and cease & desist proceedings based on complaint & hearing. If necessary, to suspend or revoke authority for violations. (Minn. Stat. §221.021 & 221.293)
5. Authorize the transfer/lease of authorities based on publication of application, input of protestants (if any) and the safety/fitness of the transferee. (Minn. Stat. §221.081 & 221.151)

During the review, the subcommittee will address whether the applicable regulations are obsolete or unnecessary, whether the applicable regulations can be reduced without adverse impact to the public safety, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The members of the freight subcommittee have determined that the views of the current authority holders is vital to making their recommendations. **The subcommittee asks that you submit any comment or opinion you may have, in writing, to the board by November 6, 1995.** These comments and opinions will be forwarded to the subcommittee for their consideration.

It is extremely important that the subcommittee has input from you for this study.



TRANSPORTATION REGULATION BOARD

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IMPORTANT

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October 12, 1995

To all Household Goods Carriers:

As stated in our letter of June 29, 1995, the Board was directed by the 1995 Legislature to conduct a study of what powers, functions and duties of the Board should be retained and the transfer of those powers, duties and functions of the Board to an appropriate agency.

The Board has established a Household Goods Advisory Subcommittee to assist them in the completion of this study. This subcommittee has been charged with performing a comprehensive review of the statutes as they pertain to the transportation of household goods and report it's findings and conclusions accordingly. Specifically the subcommittee will be reviewing the following Board functions:

1. Issuance of authority (permits) based on publication of application, input of protestants (if any), safety/fitness findings and a demonstration of need for the proposed service. (Minn. Stats. §221.121)
2. Supervision for collective rate organizations (antitrust). (Minn. Stat. §221.165)
3. Review of suspensions issued by Mn/DOT for lack of insurance & reinstate authority based on compliance. (Minn. Stat. §221.185)
4. Preside over show cause and cease & desist proceedings based on complaint & hearing. If necessary, to suspend or revoke authority for violations. (Minn. Stat. §221.021 & 221.293)
5. Authorize the transfer/lease of authorities based on publication of application, input of protestants (if any), the safety/fitness of the transferee and a showing that the permit to be transferred was active. (Minn. Stat. §221.151)
6. Hold hearings (upon complaint) to determine the reasonableness of rates & charges. (Minn. Stat. §221.161)

During the review, the subcommittee will address whether the applicable regulations are obsolete or unnecessary, whether the applicable regulations can be reduced without adverse impact to the public safety, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The members of the household goods subcommittee have determined that the views of the current authority holders is vital to making their recommendations. The subcommittee asks that you submit any comment or opinion you may have, in writing, to the board by November 6, 1995. These comments and opinions will be forwarded to the subcommittee for their consideration.

It is extremely important that the subcommittee has input from you for this study.

AN EQUAL OPPORTUNITY EMPLOYER



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STATE OF MINNESOTA

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December 27, 1995

NOTICE OF PUBLIC MEETINGS

The Minnesota Transportation Regulation Board has been directed by the Legislature to conduct a study regarding the powers, functions and duties of the Board. The purpose of this study is to determine which powers of the Board should be eliminated and the possible relocation of those powers of the Board, that should be retained, to an appropriate agency. The Board must report its findings and recommendations to the Legislature by February 1, 1996.

The Transportation Regulation Board will hold a series of meetings on the following dates to gather input from the public in connection with the findings and recommendations of the Board's study. These meetings will be moderated by the Center for Transportation Studies. Members of the Board and its staff may be present at these meetings.

For a more detailed explanation of the issues involved and the findings and recommendations developed by the Board's study, please contact Mike McKay or Barb Anderson at (612) 296-0400.

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
January 8, 1996	7:00 pm	Clay County Courthouse Commissioner's Room 807 - 11th St. N. Moorhead, MN 56560
January 9, 1996	7:00 pm	Government Service Center Room 608. 320 West 2nd St. Duluth, MN 55802
January 11, 1996	7:00 pm	Mn/DOT Regional Office Conf. Rooms A & B 2900 - 48th St. NW Rochester, MN 55901
January 16, 1996	7:00 pm	Lyon County Courthouse Commissioner's Room 607 West Main St. Marshall, MN 56258
January 18, 1996	7:00 pm	State Capitol Bldg. Room 107 75 Constitution Ave. St. Paul, MN 55155

Any change in the current regulations could have a major effect on your business. It is therefore extremely important that the Board has input from industry members at these meetings. All comments made at these meetings will be part of the record and will be considered by the Board in making their recommendations to the Legislature.

**SUMMARY OF RECOMMENDATIONS OF
SUBCOMMITTEES APPOINTED BY THE BOARD**

FREIGHT:

Repeal present system of issuing permits/certificates and replace with a simplified registration system

HOUSEHOLD GOODS:

Retain current regulatory system with some general modifications. Establish a downsized/part-time Board to oversee regulations

PASSENGER:

Retain current regulatory system with some general modifications. Regulations to be administered by a quasi-judicial body independent of the enforcement agencies (such as a part-time Board, the Public Utilities Commission or other body)

RAIL:

Retain current safety related regulations and transfer those functions to the Department of Transportation. Repeal the balance of the regulations.

Copies of the complete reports and recommendations of the subcommittees are available upon request. Contact Barb at (612) 296-0400.

Representatives from designated agencies named in study:

Dennis Lazenberry - Dept. of Public Safety
100 Stockyards Rd., Rm. 252
South St. Paul, MN 55075
612-296-5949

Betsy Parker - Mn/DOT
151 Livestock Exchange
100 Stockyards Rd.
South St. Paul, MN 55075
612-296-0331

Robert Johns - Center for Transportation Studies
200 Transportation & Safety Bldg.
511 Washington Ave. S.E.
Minneapolis, MN 55455
612-625-9376

Joel Alter - Office of the Legislative Auditor
Centennial Bldg.
658 Cedar St.
St. Paul, MN 55155
612-296-4708

Legislative Advisory Committee

Senator Phil Riveness
Minnesota State Senate
317 State Capitol
St. Paul, MN 55155

Senator Florian Chmielewski
Minnesota State Senate
325 State Capitol
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Senator Keith Langseth
Route 2
Glyndon, MN 56547

Rep. Howard Orenstein
Minn. House of Representatives
529 State Office Bldg.
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Rep. James Rice
Minn. House of Representatives
381 State Office Bldg.
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Rep. Jim Tunheim
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10716 Beard Ave. So.
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INDUSTRY ADVISORY COMMITTEE CHARGE

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include which powers of the Board should be eliminated and the possible relocation, to other agencies, of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

The Board has, therefore, created an industry advisory committee. The purpose of this advisory committee is to oversee the activities of the four industry specific subcommittees, review the findings and conclusions of those advisory committees and to prepare a consolidated report based on those findings and conclusions.

The advisory committee should complete this responsibility in an open forum which provides input from all affected and interested parties. The Board will make provision for public meetings during the process as necessary. The advisory committee will be free to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings.

During the review the advisory committee should see that subcommittee reports have addressed whether their applicable regulations are obsolete or unnecessary, whether their applicable regulations can be reduced without adverse impact to the public safety or general welfare, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.). The Board also directs the advisory committee to make deliberate efforts to see that the subcommittees have made every effort to solicit input from a representative cross-section of parties affected by their applicable statutes (both providers and users of the services) and that their reports reflect such input.

The advisory committee shall report it's findings and recommendations to the Board on or before November 15, 1995.

Attached hereto, as an Addendum, is a list of individuals the Board finds to be knowledgeable about the administration of the pertinent statutes and, as such, have been named by the Board as members of the Industry Advisory Committee.

PASSENGER ADVISORY SUBCOMMITTEE

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PASSENGER SUBCOMMITTEE CHARGE

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include (1) which powers of the Board should be eliminated and (2) the relocation to other agencies of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

The Board has, therefore, created a passenger subcommittee to examine the Board's regulatory functions as provided for in Minn. Stats. Chapters 174A and 221. The purpose of this subcommittee is to undertake a comprehensive review of these statutes as they pertain to the transportation of passengers, and report its findings and conclusions accordingly. Specifically the subcommittee should review the following Board functions:

1. Issuance of authorities (Charter permits, with or without special passenger, and regular route certificates) based on publication of application, input of protestants (if any), safety/fitness findings and a demonstration of need for the proposed service or public convenience and necessity). (Minn. Stats. §221.071, 221.072 and 221.121)
2. Supervision for collective rate organizations (antitrust) in connection with single and joint line rates & mileage guides. (Minn. Stat. §221.165)
3. Review of suspensions issued by Mn/DOT for lack of insurance & reinstate authority based on compliance. (Minn. Stat. §221.185)
4. Preside over show cause and cease & desist proceedings based on complaint & hearing. If necessary, to suspend or revoke authority for violations. (Minn. Stat. §221.021 & 221.293)
5. Authorize the transfer/lease of authorities based on publication of application, input of protestants (if any), the safety/fitness of the transferee and a showing that the permit/certificate to be transferred was active. (Minn. Stat. §221.081 & 221.151)
6. Hold hearings (upon complaint) to determine the reasonableness of rates & charges. (Minn. Stat. §221.161)
7. Fix and establish rates for regular route passenger carriers under the jurisdiction of the Board. (Minn. Stat. §221.041)
8. Hold hearings on and authorize route abandonments, reductions in service & schedule changes for regular route carriers. (Minn. Stat. §221.051)

The subcommittee should complete this responsibility in an open forum which provides input from all affected and interested parties. The Board will make provision for public meetings during the process as necessary. The subcommittee will be free to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings. The Board also strongly encourages the subcommittee to make deliberate efforts to solicit input from a representative cross-section of parties affected by these statutes (providers, users of the services, local government, carriers currently not regulated by the TRB, etc.).

During the review the subcommittee should address whether the applicable regulations are obsolete or necessary, whether the applicable regulations can be reduced without adverse impact to the public safety or general welfare, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The subcommittee shall report its findings and recommendations to the Board on or before November 1, 1995.

Attached hereto, as an Addendum, is a list of individuals the Board finds to be knowledgeable about the administration of the pertinent statutes and, as such, have been named by the Board as members of the Passenger Subcommittee.

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HOUSEHOLD GOODS SUBCOMMITTEE CHARGE

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include (1) which powers of the Board should be eliminated and (2) the relocation to other agencies of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

The Board has, therefore, created a household goods subcommittee to examine the Board's regulatory functions as provided for in Minn. Stats. Chapters 174A and 221. The purpose of this subcommittee is to undertake a comprehensive review of these statutes as they pertain to the transportation of household goods, and report its findings and conclusions accordingly. Specifically the subcommittee should review the following Board functions:

1. Issuance of authority (permits) based on publication of application, input of protestants (if any), safety/fitness findings and a demonstration of need for the proposed service. (Minn. Stats. §221.121)
2. Supervision for collective rate organizations (antitrust). (Minn. Stat. §221.165)
3. Review of suspensions issued by Mn/DOT for lack of insurance & reinstate authority based on compliance. (Minn. Stat. §221.185)
4. Preside over show cause and cease & desist proceedings based on complaint & hearing. If necessary, to suspend or revoke authority for violations. (Minn. Stat. §221.021 & 221.293)
5. Authorize the transfer/lease of authorities based on publication of application, input of protestants (if any), the safety/fitness of the transferee and a showing that the permit to be transferred was active. (Minn. Stat. §221.151)
6. Hold hearings (upon complaint) to determine the reasonableness of rates & charges. (Minn. Stat. §221.161)

The subcommittee should complete this responsibility in an open forum which provides input from all affected and interested parties. The Board will make provision for public meetings during the process as necessary. The subcommittee will be free to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings. The Board also strongly encourages the subcommittee to make deliberate efforts to solicit input from a representative cross-section of parties affected by these statutes (both providers and users of the services).

During the review the subcommittee should address whether the applicable regulations are obsolete or unnecessary, whether the applicable regulations can be reduced without adverse impact to the public safety or general welfare, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The subcommittee shall report its findings and recommendations to the Board on or before November 1995.

Attached hereto, as an Addendum, is a list of individuals the Board finds to be knowledgeable about the administration of the pertinent statutes and, as such, have been named by the Board as members of the Household Goods Subcommittee.

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FREIGHT SUBCOMMITTEE CHARGE

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include (1) which powers of the Board should be eliminated and (2) the relocation to other agencies of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

The Board has, therefore, created a freight subcommittee to examine the Board's regulatory functions as provided for in Minn. Stats. Chapters 174A and 221. The purpose of this subcommittee is to undertake a comprehensive review of these statutes as they pertain to the transportation of property, other than household goods, and report its findings and conclusions accordingly. Specifically the subcommittee should review the following Board functions:

1. Issuance of authority (permits) based on publication of application, input of protestants (if any) and safety/fitness findings. (Minn. Stats. §221.061, 221.071, 221.072, 221.121 & 221.296)
2. Supervision for collective rate organizations (antitrust) in connection with joint line rates, mileage guides & classifications. (Minn. Stat. §221.165)
3. Review of suspensions issued by Mn/DOT for lack of insurance & reinstate authority based on compliance. (Minn. Stat. §221.185)
4. Preside over show cause and cease & desist proceedings based on complaint & hearing. If necessary, to suspend or revoke authority for violations. (Minn. Stat. §221.021 & 221.293)
5. Authorize the transfer/lease of authorities based on publication of application, input of protestants (if any) and the safety/fitness of the transferee. (Minn. Stat. §221.081 & 221.151)

The subcommittee should complete this responsibility in an open forum which provides input from all affected and interested parties. The Board will make provision for public meetings during the process as necessary. The subcommittee will be free to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings. The Board also strongly encourages the subcommittee to make deliberate efforts to solicit input from a representative cross-section of parties affected by these statutes (both providers and users of the services).

During the review the subcommittee should address whether the applicable regulations are obsolete or unnecessary, whether the applicable regulations can be reduced without adverse impact to the public safety, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The subcommittee shall report its findings and recommendations to the Board on or before November 1, 1995.

Attached hereto, as an Addendum, is a list of individuals the Board finds to be knowledgeable about the administration of the pertinent statutes and, as such, have been named by the Board as members of the Freight Subcommittee.

RAILROAD ADVISORY SUBCOMMITTEE

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RAIL SUBCOMMITTEE CHARGE

On June 1, 1995, Governor Carlson signed into law Chapter 265 (SF #371) and Chapter 248 (SF #1246). These bills, among other things, directed the Transportation Regulation Board, in cooperation with the Commissioner of Transportation, the Center for Transportation Studies and the Legislative Auditor, to conduct a study of the transfer of powers, duties and functions of the Board to an appropriate agency. This study is to include (1) which powers of the Board should be eliminated and (2) the relocation to other agencies of those powers of the Board that should be retained. The bills further directed the Board to submit a report on the study, including recommendations and draft legislation, to the legislature by February 1, 1996.

The Board has, therefore, created a rail subcommittee to examine the Board's regulatory functions as provided for in Minn. Stats. Chapters 218, 219 and 222. The purpose of this subcommittee is to undertake a comprehensive review of these statutes as the pertain to transportation by rail, and report it's findings and conclusions accordingly. Specifically the subcommittee should review the Board functions listed on the attached Addendum.

The subcommittee should complete this responsibility in an open forum which provides input from all affected and interested parties. The Board will make provision for public meetings during the process as necessary. The subcommittee will be free to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings. The Board also strongly encourages the subcommittee to make deliberate efforts to solicit input from a representative cross-section of parties affected by these statutes.

During the review the subcommittee should address whether the applicable regulations are obsolete or unnecessary, whether the applicable regulations can be reduced without adverse impact to the public safety, and, if any remaining functions exist, what type of agency is best suited to perform those functions (quasi-judicial, administrative, etc.).

The subcommittee shall report it's findings and recommendations to the Board on or before November 1, 1995.

Attached hereto, as an Addendum, is a list of individuals the Board finds to be knowledgeable about the administration of the pertinent statutes and, as such, have been named by the Board as members of the Rail Subcommittee.

FUNCTIONS OF THE TRB TO BE REVIEWED BY SUBCOMMITTEE

1. If necessary, to make schedules of intrastate rates to provide for lower costs in connection with the transportation of sand, gravel, crushed rock, and other materials to be used in the construction and maintenance of public roads and streets. (Minn. Stat. §218.025)
2. Review rate filings for reasonableness in accordance with federal standards (Minn. Stat. §218.041, Subd. 2 & 7, US Code 49 10101 to 11917, and certification authorized by Interstate Commerce Commission)
3. In response to a petition, prescribe ample facilities by track connection, joint use of tracks, freight platforms and depots, warehouses, docks (Minn. Stat. §218.041, Subd 4)
4. Determine the proportionate share of each company in the cost of providing connecting and transfer facilities, if parties fail to agree. (Minn. Stat. 218.041, Subd. 4)
5. Direct construction, maintenance and operation at any points prescribed by law of all side tracks and reasonable facilities connecting any road with any grain warehouse, dock, wharf, etc. (Minn. Stat. §218.041, Subd 4)
6. Prescribe reasonable rules for the handling of freight, passengers, etc. (Minn. Stat. §218.041, Subd. 4)
7. Grant relief, upon petition, from the operation of principles established in Minn. Stat. §218.021, Subd. 1 (5), (6) & (7) (Minn. Stat. §218.041, Subd. 4)
8. Direct repair, reconstruction or replacement of any in adequate or unsafe trackage, structure or facility (Minn. Stat. §218.041, Subd. 4)
9. Hold hearings to determine necessary maintenance, improvement or closing or grade crossings (Minn. Stat. §219.074 & 219.39)
10. After investigation from the commissioner, or upon complaint, order railroad to provide crossing guards at a grade crossing if it is found necessary to protect public. (Minn. Stat. §219.23)
11. Order other necessary safeguards at grade crossings to protect public (Minn. Stat. §219.24 & 219.40)
12. Upon petition of a city council or railroad, establish speed limits over a crossing (Minn. Stat. §219.383)
13. Issue variances for clearance standards (Minn. Stat. §219.47)
14. Hold hearings and authorize track abandonments and removals (Minn. Stat. §219.681 to 219.741)
15. Hold hearing and authorize change, reduction or elimination of agency services (Minn. Stat. §219.85)
16. Hold hearings and make determinations in the right of first refusal for sale of property within right-of-way (Minn. Stat. §222.632)

PASSENGER SUBCOMMITTEE REPORT

I. Introduction

The Transportation Regulation Board was directed by the 1995 State Legislature to conduct a study of (1) what powers, functions and duties of the Board should be retained and (2) the transfer of those powers, functions and duties of the Board to an appropriate agency.

The Board established a Passenger Advisory Subcommittee. This subcommittee had been given instructions to perform a comprehensive review of the statutes as they pertain to the transportation of passengers. The subcommittee was then to report its findings and conclusions to the overall Advisory Committee and the Board.

The subcommittee was instructed to review whether the applicable regulations were obsolete or unnecessary. They were also to review whether the applicable regulations could be reduced without adverse impact to public safety. The subcommittee was then instructed to explore what type of agency would be best suited to perform those functions.

The makeup of the subcommittee included a wide range of motor carriers such as regular route (RRCC), charter (CH), limousine operators, the Metropolitan Airports Commission, Metropolitan Council, transportation regulatory attorneys and the Minnesota Senior Federation.

The committee held a total of six public hearings. Presentations were made by the following:

Betsy Parker -	Director, Office of Motor Carrier Services
Duane Bartels -	Minnesota State Patrol - Commercial Vehicle Inspections
Larry Bakken -	Vice President, Norwest Insurance Agency
Cheryl Offerman -	Minnesota Office of Tourism

All meetings were tape recorded and are available through the Transportation Regulation Board.

II. Summary of Discussions

Discussions of the subcommittee focused on four central areas of regulation:

1. Territorial vs Functional Permitting:

Discussion regarding the territorial vs functional permitting brought up a key factor of public interest vs private interest. Territorial permitting allows for limited/closed entry into the marketplace, creating a monopolistic business sector. However, this system seems to work due to the limited/seasonal markets available to operators. There is only so much business to provide service to. These territorial rights allow for reliability of tariffs and consistency of regular route and charter services.

Functional permitting tends to serve the foremost public interests of having safe vehicles operated by businesses that have adequate amounts of insurance in force to assure users that, in the event of an accident, there will be insurance sufficient to cover the reasonable liabilities incurred by the operator. It establishes a more limited form of economic regulation for existing charter and regular route services. It will also prevent possible chaos and uncertain financial futures for existing, economically-regulated carriers as they transition toward a less economically-regulated market. This reduced economic regulatory approach maintains with its continuation of territorial franchises for charter and regular route carriers a degree of reliability of service. Publication and notification of applications should continue as is.

2. Clearer Definition of Carrier Services and Requirements:

Over many years, the legislature, in response to the growing types of services and consumer demand, has created a variety of "hybrid" services. These services are largely economically unregulated. Some of them further compete with carriers that are economically regulated. Two of these economically unregulated categories of operations include personal transportation services (PTS) and limousines. Sometimes their services compete with the economically regulated charter and regular route services. In other cases they are providing a different type of service to the marketplace.

3. Centralization of Common Regulatory Functions:

All members of the subcommittee agreed that there is room in the state regulatory agencies for improvement and streamlining to increase efficiency. The presentation made by the Department of Transportation, Office of Motor Carrier Services (OMCS), the Department of Public Safety (DPS) - State Patrol and the Transportation Regulation Board (TRB) indicated that there was a substantial duplication of responsibilities among the three agencies.

The subcommittee realized that the physical tasks might be different, but the purposes are the same and they try to achieve the same goals. For example:

Issuance of authorities:

Both the TRB and OMCS issue permits/certificates for passenger carriers. OMCS issues permits for Limousine, Special Transportation and Personal Transportation Service providers. The Board issues permits/certificates for Charter and Regular Route carriers. This duplication of functions requires both the TRB and OMCS to retain staffing for this area. There is no reason why all permits could not be issued by the same agency.

Enforcement:

Both the DPS and OMCS are charged with enforcing the State regulations. Because of an "agreement" those agencies have determined that DPS would primarily do field enforcement (scales, roadside inspections, traffic violations, etc.) and OMCS would perform terminal audits to determine compliance with the regulations. This agreement, in itself, has caused confusion and frustration in the industry. Based on testimony of various carriers and the discussions among the subcommittee members, it would appear that DPS and OMCS have completely different philosophies in the area of enforcement. DPS takes a traditional approach to enforcement while OMCS has adopted the theory that they are not an enforcement agency and that education, rather than punitive actions, will lead to a voluntary compliance. This was even stated by the OMCS Director, Elizabeth Parker, in her report to the House Finance Committee during the 1995 Session. It would appear that the industry is not satisfied with Mn/DOT's OMCS position on this matter (see 4 below). One carrier went so far as to state:

"The Office of Motor Carrier Services (OMCS) is a totally ineffective bureaucratic organization solely dedicated to job justification and promotion. It doesn't take a rocket scientist to figure this out! Good, knowledgeable people are being stifled by superiors not wanting to rock the political boat. This has affected safety. Laws on the books they are charged with enforcing have been rendered null and void by its unwillingness to enforce. Inter-agency fighting is a pure waste of taxpayers money and is, plain and simple, job justification. Its job of enforcing transportation safety is much too important to be left to political hacks."

This sentiment was shared by the members of this subcommittee and, as we understand, the members of the other motor carrier subcommittees. The subcommittee recommends that enforcement should be left to an enforcement agency and avoid problems created by differing opinion of two commissioners. Make the policy consistent.

The Federal Office of Motor Carriers was recently criticized by the Senate Appropriations Committee for adopting this kind of policy. In its 1995 budget report, the Senate Committee said that the agency was spending too much time on education, technical assistance and quality management and not enough time on compliance reviews.

One aspect of this division of enforcement functions was examined by the Legislative Auditor a few years ago. In their report, it was stated that "In summary, we believe that the data supports a conclusion that the Patrol is more effective than Mn/DOT in detecting safety violations." Because of "the agreement" that was reached between Mn/DOT and the Patrol, the auditor's report concluded that the division of duties be maintained. However, it was stated that "If this solution does not resolve the dispute between the agencies, however, we recommend that all truck safety inspections, both roadside inspections and safety reviews at truck terminals, be placed under the authority of the Dept. of Public Safety in the State Patrol."

Further inefficiencies are created because of the jurisdiction over enforcement being in two agencies. Such as the need to establish communication lines between departments, duplicative supervisory staffing, etc.

This subcommittee believes that, with three agencies conducting similar activities, it would be in the best interest of the State to merge the functions and eliminate the wasted tax dollars.

4. Unified Enforcement Standards and Penalties:

From the beginning, the subcommittee members expressed that enforcement was a critical factor in determining whether regulation should be retained. If there was no enforcement, why bother with regulations. Therefore, enforcement became a focal point during the subcommittee discussions. These discussions revealed that there is much frustration felt by the industry because it is felt that there is a definite lack of enforcement on the part of OMCS. It is the general perception that OMCS does not act on complaints that are filed, or they will scrutinize the complaints that are filed and investigate those that are not controversial or against a party that has any political influence. When subcommittee members have asked OMCS about complaints, the general response has been that the department does not have enough personnel, time or financial resources to investigate all complaints. In Ms. Parker's report to this subcommittee, it was shown that OMCS conducted 796 audits in Fiscal Year 1994. All of these audits were made on interstate carriers under a federal program. Her report indicated that no audits were conducted on intrastate carriers. It is the understanding that the Transportation Modernization Act increased the cab card fees (and increased the complement and budget of OMCS)

in order to increase enforcement and alleviate this "lack of personnel and resources.

This perceived "lack of enforcement" has, in the eyes of this subcommittee, put the agency into the position of whether it should retain those functions. This subcommittee examined the organizational chart provided by Ms. Parker. This chart indicated that OMCS may be "top heavy" in the area of supervisors. The average ratio of supervisors to employees is 1:6. Ms. Parker explained that many of the supervisors have "other duties", but did not fully explain what those functions are. In her explanation she stated that, for example, the supervisor of the rate section was almost exclusively dedicated to performing studies. If there is a lack of personnel or financial resources, why would OMCS have an employee dedicated to "studies". What studies are these and why are they being made without a legislative directive. Certainly it would be a better use of resources to have more enforcement employees on staff.

Currently, the law provides for administrative penalties or civil penalties as a remedy for operators violating the law. However, they are seldom used by OMCS. When administrative penalties are invoked, the fines are often negotiated to a very small amount (plea bargained) in order to avoid a hearing on the violations or some later challenge. As an example, OMCS may have found a carrier with several violations, but negotiates with the violator and only submits one count with a small fine. This way the violator will not dispute the findings and pays the small fine. Since this system has been adopted by Mn/DOT, OMCS has all but done away with civil penalties formerly charged under Minn. Stat. §221.281. This subcommittee believes that if an operator is found violating the law, the agency charged with enforcement should take appropriate action and assess civil or administrative penalties that fit the crime.

5. Other Discussions:

The subcommittee discussed, and finally concluded, that the State should consider creating one agency (similar in structure to the TRB, with part-time Board members and appropriate full-time staff) to handle administrative and quasi-judicial matters pertaining to the regulation of passenger carriers. This agency's functions would include the following:

1. Issuance of permits/certificates, decals, cab cards and authorities for all passenger carriers
2. Administration of reports and filings (ie: insurance, suspensions, audits, tariffs, etc.)

Complaints would be handled directly by the Office of Administrative Hearings with the litigants bearing the costs.

All enforcement duties and functions should be handled by the Dept. of Public Safety (State Patrol).

III. Passenger Advisory Subcommittee Formal Recommendations:

1. Retain the TRB with a part-time Board and a full-time staff.
2. Continue the issuance of new authorities for charter, regular route, limo and personal transportation services, to be filed directly with the TRB.
3. Issuance and criteria: Public notice of applications for all categories - limo and personal transportation services would have an informational purpose only, and not subject to protest.
4. Continue current system of protests for charter applications.
5. Continue current system of protests for regular route applications.
6. Continue as under current law for charter, regular route, limo and personal transportation services with establishing safety and fitness requirements.
7. Raise current levels for limo and personal transportation service to \$1.5 million. Raise current levels for charter and regular route for 29 passengers and under to \$1.5 million, and for 30 passengers and over to \$5.0 million.
8. Charter, regular route, limo and personal transportation - require Form E on file with a 30-day cancellation notice.
9. Board should receive cancellation notice of insurance - advisories sent to appropriate agency for proper enforcement actions.
10. Keep current standard of "need of service" for charter and regular route.
11. Retain the collective rate organizations (antitrust) in connection with single and joint rates and mileage guides.
12. Review of suspensions and reinstatement of authorities issued by an appropriate agency becomes an administrative function. Rescind Minn. State Statute 221.185.
13. Continue hearings on and authorize route abandonments, reductions in service and schedule changes for regular route carriers.

14. Retain function of fixed and established rates for regular route passenger carriers under jurisdiction of the Board.
15. Recommend self-policing complaint proceedings. Carriers will be enabled to bring complaints against other carriers. The complaints will be heard by the Office of Administrative Hearings under the procedures of that office. The cost of the hearing will be borne equally by the parties and decision of the Administrative Law Judge is final and binding on the parties subject to appeal to the Minnesota Court of Appeals. The Office of Administrative Hearings would have injunctive relief to stop illegal operations and the power to recommend the assessment of damages if proven with enforcement of the damage award through the district courts.
16. Transfers or leases of permits/certificates must be approved by the TRB. The criteria or whether the transfer is consistent with the public interest and that the Transferee or Lessee must be fit and able (remove requirement of historical activity as a criteria). That current prohibition against a permit carrier purchasing a permit be removed and let there be no restrictions on existing carriers purchasing permits or certificates.
17. Tariffs for charter should contain the minimum rate. The minimum rate is subject to a complaint that is below cost. Such complaints will again be self-policing by the industry as set for before an Administrative Law Judge. Reasonableness of rates, like unlawful operations, will not be enforced by the TRB nor the DOT.

IV. Minority Opinion:

One committee member recommended that economic regulation is not functional in a growing industry and recommended that it be eliminated allowing safety to be the priority criteria for entry into the passenger industry.

HOUSEHOLD GOODS ADVISORY SUBCOMMITTEE
Report and Recommendations to the Transportation Regulation Board
Submitted November 21, 1995

INTRODUCTION:

The 1995 Legislature enacted laws Chapters 248 and 265 that provided for the Minnesota Transportation Regulation Board to conduct a study of the rules and duties of the Board in regulating the trucking industry, including the Household Goods moving industry.

In response to the directive given by the Legislature, the Board established a network of advisory committees to assist them in examining the current powers and functions of the Board. A Household Goods Moving Advisory Subcommittee was charged with performing a comprehensive review of Minn. Statutes Chapters 174A and 221, and related rules as they pertain to the transportation of household goods. After performing the review, the subcommittee was to study the powers, functions and duties of the Board and determine what functions the subcommittee felt were necessary and what type of agency should oversee those functions. The findings and recommendations of the subcommittee were to be presented to the Board for their consideration.

The Board mailed a notice to all registered household goods carriers, to consumer groups, the Better Business Bureau and various state agencies including those in Maryland, Florida, Wisconsin and the Minnesota Departments of Transportation and Public Safety and other interested parties, and posted a note in its calendar. Notices also solicited volunteers to serve on the Household Goods Carriers Advisory Subcommittee. The members of this subcommittee, composed of fourteen persons from various parts of the state including twelve registered household goods carriers; one consumer representative of a transitional housing organization of a metropolitan area church; and the chief executive of a teamsters union whose members include employees of certain household goods carriers, were all selected from the names submitted in response to the notice.

BACKGROUND INFORMATION

The public's need for this specific type of regulatory control over the household goods moving industry emanates from the fact that the customers, "the consumers" purchase moving services and move their possessions to a new residence very infrequently, perhaps two or three times during a lifetime. Of all their possessions, they believe many are priceless, and that they are nearly totally without knowledge of how to buy moving services and how to protect themselves from being harmed in the transaction. These consumers are not commercial purchasing agents who know how to enter into a contractual agreement and purchase this very specialized kind of transportation.

Therefore, Minnesota regulations require public utility type controls over entry, rates, contract, insurance, payment, advertising and even claims. A study of the moving industry regulations readily discloses the fact that the regulations are not unduly onerous to the industry and, in the opinion of this subcommittee, less onerous and costly than the deregulation industry alternative would create under common law and what consumer advocates would impose. Current regulations are a more effective service to the public and the industry than any other approach to consumer protection.

Over the last three years, the Florida Department of Agriculture and Consumer Services had catalogued over 1000 complaints with 457 directly related to transactions occurring wholly within the state's borders. During that same period, the Office of the Attorney General has accumulated reports on 315 separate consumer cases for which it estimates customer damages to be about \$200,000. There are reports from the states (New Jersey and Florida, and even the counties of Broward, Palm Beach and Dade Counties in Florida) attempting to enact even more onerous and punitive consumer protection regulations after periods of deregulation of the household goods moving industry.

The state of Florida outlined the following complaints relating to household goods carriers:

Types of Complaints:

1. Price Fluctuations - (low-balling)
 - a. Billing increases as large as 10 times the quoted price.
2. Non-delivery of items - (taking furniture hostage)
3. Inadequate loss coverage - (no or low replacement value)
 - a. Customer receive as little as \$15 for TV
4. Problems with claims
5. Shipper liability exposure - (no workers compensation or general liability)
6. Problems with name identification - (close and re-open; cross-advertising)
7. Poor adjudicatory standing - (can't prosecute under unfair or any other law)
8. No clearinghouse for complaints

Recent reports from the Wisconsin Department of Justice reflect similar complaints in Wisconsin.

Minnesota unlawful detainer and writ of restitution laws provide that upon eviction landlords engage in contracting with household goods movers for packing and moving the household goods of consumers, which upon eviction we find that, in most cases, the consumer is not present to negotiate an agreement and to agree to

the terms and conditions of the move, nor to what storage facility or contract terms will be used to store the consumer household goods. In order to recover their property, these unwary consumers will have to pay the mover's cost and charges and be limited in their claims for damage or loss to that agreed to by the landlord. The movers regulated rates and rules on transportation easily resolve what is the proper charge and the regulated transaction controls the claims determination.

Minnesota's rules requiring rates to be reasonable and non-discriminatory are important consumer protection rules, particularly in light of reports of consumer complaints of gouging and other problems in the marketplace of deregulated states such as Florida.

Minnesota's Uniform Commercial Code provides for a motor carrier lien applying upon the consumer's property being placed in the vehicle and the consumer must pay the charges demanded of the consumer before there may be a release of property to the consumer. There obviously needs to be adequate protection for the unwary consumer under these conditions. Disputes over charges have been easily resolved by simply reading the movers tariff containing rates, charges and rules of their application.

The statistics of the State Patrol of the Department of Public Safety and Motor Carrier Services of the Department of Transportation discloses that there is substantial insurance delinquency of 870 firms with lapse of insurance for periods ranging from 1 day to over 366 days with approximately 7.5 percent of all commercial vehicles being inspected, 11.5 percent interstate carriers being audited and 33 percent of the inspections revealing an out-of-service defect for carriers.

There is a substantial need to become more efficient, and that means merging all motor carrier transportation representatives into the commercial vehicle section of the State Patrol. It seems wasteful to duplicate clerical and inspectional supervisors, grant and engineering personnel. There is no justification for two state agencies being involved in safety regulation of the trucking industry. From the beginning, it was the feeling of the subcommittee that without effective and consistent enforcement, regulations have absolutely no purpose.

When a household goods carrier is hired by a member of the public, there is an expectation by the consumer that the carrier is reliable and will perform in a proper, safe and economical manner. The consumer also expects that the proper authorities will be there to correct any problems that may arise. This is different from the traditional freight/shipper/carrier relationship where the purchaser of freight transportation services is a traffic manager or a trained purchaser of transportation services.

The subcommittee examined the actual functions of the Board and the enforcement agencies. Presentations were made by the State Patrol and the Office of Motor Carrier Services of the Minnesota Department of Transportation. These presentations helped the committee members understand the role those agencies play in the regulation of household goods carriers and how the functions of

those agencies might be affected by the retention or elimination of Board functions. At the request of the subcommittee, the Board mailed a letter to all current household goods carriers, soliciting their comments on the existing regulations in order to gain input from the industry. The replies overwhelmingly supported continued regulation by the TRB. Requests for comments were also sent to various consumer advocacy groups. Regrettably, no replies were received.

SUBCOMMITTEE RECOMMENDATIONS:

The subcommittee met on six occasions and spent considerable time hearing testimony and reviewing written statements and letters. The members were so conscientious that when they could not attend or when they had to leave early, they would call in and write in their votes and request that they be included in the minutes. The committee minutes should reflect their requests.

- A. Continue the separation of enforcement and adjudication powers and agencies.
 1. Continue the Board and current separation of enforcement and adjudication powers and agencies, including the continuation of the adjudication powers in the TRB, which consists of three members, with staggered terms, in which no more than two members belong to the same political party. Provided, however, that the Board members be part-time with a salary less than the current \$60,000 per year and a full-time staff as necessary to issue permits, handle insurance filings, rate and tariff matters and other administrative duties. The Board's budget and staffing should reflect those changes.
 2. Create efficiencies in regulatory administration by amending laws to supplement the duties and responsibilities of the TRB by authorizing the Board to design the forms and process for consideration the applications (petitions) for Household Goods authority and administer cab cards, insurance and tariff filings.
 - a. Continue the historic practice of having the Board publish all applications for HHG authority, refer all disputed or challenged applications to the Office of Administrative hearings and adjudicate the decisions of the Administrative Law Judge (ALJ).
 - b. Provide that all complaints be referred to the Board and if the facts are disputed or the investigation reports and alleged violations are disputed, submit disputed issues to an ALJ of the Office of Administrative hearings for contested hearings.
 - c. The Board should continue to adjudicate and decide all ALJ reports and recommendations and refer to

the enforcement agency, for investigation and report, all disputed allegations of violations.

- d. The Board shall adopt all rules appropriate to the conduct of the HHG moving business, as well as the procedures and practices for hearings before the Board.

B. Continue current economic regulation of Household Goods Movers including, but not limited to, entry, rates and collective ratemaking - including:

1. Continue the fit and able rule with special emphasis on the issue of lack of fitness based on prior decisions and record of illegal hauling.
2. Continue the claims rules relating to released valuation and the mover's authorization to act as agents for insurers and sell household goods insurance to consumers.
3. Continue current consumer protection contract language requirements relating to the Household Goods Bill of Lading and related documents.
4. Continue the regulations relating to claims, including the filing of claims within nine months and institution of lawsuits within the two-year rules.
5. Continue the current rule governing payment for services.
6. Continue current consumer protection advertising rules.
7. Continue tariff and tariff compliance rules.
8. Continue the authority for collective ratemaking under the Board's supervision.
9. Continue, for natural disasters, current temporary authority rules.
10. Change the state motor vehicles liability insurance requirements to coincide with the federal DOT requirements.
11. Continue state cargo liability insurance requirements of \$50,000/cargo.
12. Continue Section 221.121, Subd. 6a rules to prohibit illegal hauling and provide enforcement against unlicensed movers.
13. Raise Household Goods permit authority application fees from current \$150 to \$750, a one-time fee, to help finance safety review during the first 180 days of an applicant's operations.
14. Raise mover's cab card fees from current \$40 to \$50 per vehicle to help finance safety reviews.

15. Continue the rules requiring truck identification to include name, address and the permit number on each side of the truck.
 16. Provide for all disputed civil penalty recommendations by enforcement agency and report of the ALJ to be adjudicated before the Board.
- C. Require safety compliance audits on qualified new applicants who prove public need and financial and ability fitness requirements.
1. The Board should issue a new Household Goods authority to such applicants only if the applicant has a satisfactory US/DOT safety rating or a state safety review.
 2. For applicants who do not have a satisfactory US/DOT safety rating or state safety review, the Board may issue a permit contingent upon the applicant obtaining a satisfactory safety inspection and audit within the first 180 days of a household goods applicant's approval by the Board. Failure to comply with the safety regulations within that period should require the Household Goods authority being automatically declared null and void. Any applicant who has an unsatisfactory US/DOT safety rating or state safety review shall be deemed unfit and not issued a household goods carrier permit.

OTHER ISSUES:

The committee feels that there is a costly duplication of functions and personnel regarding enforcement by the State Patrol of the Department of Public Safety and the Office of Motor Carrier Services of the Department of Transportation. The committee recommends that the duties and functions and only that portion of the staff that are trained, qualified inspectors and enforcement clerical personnel of the Office of Motor Carrier Services be transferred to the Department of Public Safety for the purpose of eliminating duplication of services and to reduce the cost of state government.

Respectfully submitted,

Douglas B. Bester
Chairman
Household Goods Subcommittee

MEMORANDUM

DATE: November 27, 1995

TO: MINNESOTA TRANSPORTATION REGULATION BOARD

FROM: Report of Minority: Household Goods Subcommittee

Federal law impacting state regulation of intrastate motor carrier activities precipitated the June 1, 1995, Minnesota statutes, Chapter 265 and Chapter 248. The federal law recognized the unique character of household goods transportation and consequently excluded household goods transportation from an otherwise fairly broad mandate to deregulate motor carrier transportation within the various states. The State of Minnesota is thereby left to resolve the question of whether or not there is a sufficient public interest at stake to warrant retention of a common carrier regulatory scheme that is over a half-century old.

Household goods transportation is unique, because many of the individual shipment transactions occur with a customer who is typically not well acquainted with purchasing a truck transportation service. Furthermore, it is difficult and maybe impossible, to predict costs for the service with consistent accuracy or to consistently transport the cargo without damage. The resulting consumer issues related to household goods moving cause this segment of motor carrier transportation to be actually viewed as a retail service trade. It was for this reason that the federal government has left to the States the decision whether to regulate household goods carriage, in what manner to regulate it, and to what degree there should be regulation.

The household Goods Sub-Committee met several times. Its meetings were well publicized to the state's various licensed household goods carriers and to the public. In particular, invitations to participate and to comment were extended to the Better Business Bureau and to the Renters Union, two prominent and respected consumer advocates. Both declined comment. We infer this to mean that household goods carriage regulation is viewed by them as a non-issue. The Minnesota State Patrol made a presentation, and it centered on safety and enforcement issues applicable to trucking in general. The Patrol witness acknowledged there is no particular distinctive safety or enforcement issue related to household goods carriage. Ms. Parker, representing Minnesota Department of Transportation appeared and discussed various issues relating to budget, insurance filings, and permitting. In the period of January, 1993, through August, 1995, MN DOT received a total of forty-five complaints regarding household goods carriers. Twelve complaints related to final charges being greater than estimated. MN DOT has no power to resolve these complaints. Nine

complaints related to damaged goods. MN DOT has no authority to resolve these complaints. Twelve complaints related to alleged traffic or safety violations, and it cannot be determined whether these alleged violations took place during the course of intrastate or interstate commerce. Ten violations related to a holding out of carrier service without appropriate authority, a violation of law by those who presumably are not industry members. Two violations were attributed to improper application of lawful tariff rates.

A reasonable person must conclude from the evidence presented by parties outside the industry that there is no compelling reason to believe that continued traditional regulation by a particular state agency is warranted. The cost to maintain regulation for the promulgation of rules and for enforcement is far beyond the value to the public. This is the conclusion unless one subscribes to a belief that the public is presently well-served by the industry because of the last half-century of regulation by the State of Minnesota.

In considering the latter possibility, we look at testimony of Mr. Rosenthal who represents a minority of the members of the industry through the Minnesota Transport Services Association. He spoke in favor of continuance of separation of enforcement and adjudication powers, thereby requiring the involvement of at least two agencies. He spoke in favor of continued limited entry by new business enterprises into the industry. He spoke in favor of a continued regulatory board to adjudicate and decide reports and recommendations of administrative law judges and to promulgate rules appropriate to the conduct of the household moving business! He would continue a series of rules related to granting of anti-trust immunity, collective rate-making, tariff regulations, shipment documentation, cargo liability, and permit fees, among other things.

We, as industry members, understand the respect Mr. Rosenthal has for the existing regulatory frame work and how in earlier days it brought some order to a somewhat chaotic and growing motor transportation system. However, we think the system is now in place and the public will have access to a very dependable and customer driven system regardless of what, if any, regulatory frame work the State of Minnesota may choose for now and into the foreseeable future. The probable fact is that a continuance of the present regulatory scheme may ultimately stifle creativity and innovation and result in depriving Minnesota's citizens of future advantages that might be obtainable. As the Federal government and many other states continue to lift regulations related to economics and to freedom of entry, Minnesota will hardly be able to justify its continuance of a historic frame work that is essentially antiquated.

To those in the industry who Mr. Rosenthal apparently speaks for; those who believe the industry serves the public well because of historic regulation, we have an answer. More than twelve years ago, the State of Wisconsin eliminated all regulation particular to household goods carriage. We are not aware of any adverse effects to the public. We are not aware of any voices calling for the State to again regulate household goods carriage for the public interest. Citizens of Wisconsin have access to the same kind of high quality service as do Minnesota citizens. The only difference we are

aware of is that in Wisconsin, the costs of regulation do not have to be shouldered by the taxpayers. And maybe the members of the industry have to compete a little harder!

It is therefore our position that Minnesota can choose to eliminate all regulation peculiar to household goods carriage, as was done in Wisconsin, with no harm to the public. We do concur that certain safety and insurance regulations applicable to the trucking industry are appropriate and should be maintained.

We can agree that there would be some benefit to the industry and to consumers if certain basic remnants of regulation were put into statute format. This can be done in order to define household goods carriage and to assign a statutory cargo liability level. Uniform contract terms and conditions of household goods carriage would be beneficial. Appropriate cargo insurance applying to household goods carriage could be added to the existing insurance requirements that will be a part of the trucking safety regulations.

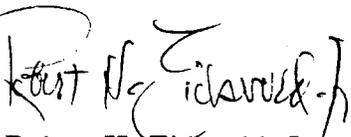
In conclusion, we think there is no evidence that causes us to believe there is any overwhelming need for regulations specific to household goods transportation or for any particular government agency to oversee our commercial activity. We do agree that some rules would be beneficial in order for the industry to uniformly present itself to the consumer thereby reducing the potential for misunderstanding. We have summarized our suggestions for these rules in Appendix A, "Proposal for the Establishment of Contemporary Regulations for the Intrastate Transportation of Used Household Goods." Under our proposal, no government agency would need to be established for the purpose of rule making or for enforcement of regulations unique to household carriage.

Respectfully submitted,

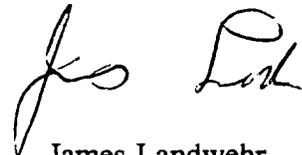
Barrett Moving & Storage

Piepho Moving & Storage

Whereley Moving & Storage


Robert H. Eidsvold, Jr.


Mark Piepho


James Landwehr

Appendix A

PROPOSAL FOR THE ESTABLISHMENT OF CONTEMPORARY REGULATIONS
FOR THE INTRASTATE TRANSPORTATION OF USED HOUSEHOLD GOODS

1. Household Goods Defined: "Household goods" means personal effects and property used or to be used by the owner in the owner's dwelling; furniture, fixtures, equipment and property of business places and institutions, public or private, when a part of the stock, equipment, supplies or property of such establishments.

2. Household Goods Carrier: Any person or business entity offering or performing household goods transportation service to the public with origin and destination points within the State of Minnesota shall:

A. Annually register its holding out as an intrastate household goods carrier at the office of _____, State of Minnesota.

B. file with _____, State of Minnesota, a certificate of cargo insurance in form specified by such _____, with an insurer licensed in Minnesota, in amount not less than \$ _____.

C. and each such household goods carrier shall cause to be executed a Bill of Lading document covering each movement of household goods. Each such Bill of Lading document shall, as a minimum, be retained in carrier files for two years. It shall contain the following Uniform Contract Terms and Conditions:

(INSERT CONTRACT LANGUAGE)
(see following pages)

Appendix A

D. Each household goods carrier shall accept cargo liability for goods in its possession for \$1.25 times the weight of the shipment, except that a shipper may, by written declaration in prominent language on the face of the Bill of Lading, declare a higher value, or may declare a minimum value of sixty cents per pound per article, written in his or her own handwriting. In the event of loss or damage occurring to shipments whose total actual weight is not measured, absent a specific valuation by the shipper prior to loading, the carrier liability for each shipment shall not exceed \$5000.

* E. The conviction of violation of these regulations shall be punishable by fine of up to \$2000 and/or the revocation of the privilege of a business entity or any officer or owner to register as a household goods carrier for up to five years.

* Each household goods carrier shall maintain a pricing guide which shall be available at the office of the carrier for public inspection at any time during business hours. Such guide shall list a price for any service provided by the carrier in connection with any intrastate household move and shall be the determinant of any charge for any service made by the carrier unless there is mutual agreement between the carrier and the shipper for some other pricing basis.

* - optional language for addition to regulation

GENERAL RULES AND REGULATIONSCONTRACT TERMS AND CONDITIONS OF UNIFORM HOUSEHOLD GOODS BILL OF LADINGTRANSPORTATION TERMS/LIMITATION OF CARRIER'S LIABILITY

1. The carrier shall be liable for physical loss of or damage to any articles from external cause while being carried or held in storage in transit EXCEPT for condition or flavor of perishable articles, and EXCEPT documents, currency, money, jewelry, watches, precious stones or articles of extraordinary value including accounts, antiques, bills, deeds, evidence of debt, securities, notes, postage stamps, stamp collections, revenue stamps, letters or packets of letters, articles of peculiarly inherent value, precious metals or articles manufactured therefrom, which are not specifically listed on the bill of lading, and EXCEPT loss or damage caused by or resulting:
 - (a) from an act, omission or order of shipper; or from acts of God (natural as opposed to human causes);
 - (b) from insects, moth, vermin and ordinary wear and tear;
 - (c) from defect or inherent defect or hazardous characteristic of the article;
 - (d) from strikes, lockouts, labor disturbances, riots, civil commotions, or the acts of any person or persons taking part in any such occurrence or disorder.

This contract is also subject to the following additional limitations of the carrier's liability which shall be either:

- (a) The amount of the actual loss or damage not exceeding \$1.25 times the actual weight (in pounds) of the shipment, or the lump sum declared value, whichever is greater; or
- (b) The actual loss or damage not exceeding 60 cents per pound of the weight of any lost or damaged article when the shipper has released the shipment to carrier, in writing, with liability limited to 60 cents per pound per article.
- (c) If the shipper places a total value on the shipment in excess of 60 cents per pound per article, the total value must be insured by the shipper if the shipper is to recover more than 60 cents per pound per article in case of loss or damage.
- (d) At the shippers request Replacement Value Protection (RVP) may be purchased from participating carrier's insurance company via a separate certificate. The rates and rules concerning RVP are in participating carrier's tariff.
- (e) In the event of loss or damage occurring to a shipment where the total actual weight of the shipment is not known or measured, absent a specific valuation by the shipper prior to loading, the carrier liability for each shipment shall not exceed \$5000.

GENERAL RULES AND REGULATIONS

CONTRACT TERMS AND CONDITIONS OF UNIFORM HOUSEHOLD GOODS BILL OF LADING
(continued)

The carrier shall not be liable for delay caused by highway obstruction, or faulty or impassible highways, or lack of capacity of any highway, bridge or ferry, or caused by breakdown or mechanical defect of vehicles or equipment, or from any cause other than negligence of the carrier; nor shall the carrier be bound to transport by any particular schedule, means, vehicle or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination.

The shipper shall be liable for any and all charges applicable under carrier's tariffs, and pay therefore as provided in said tariffs.

(a) The shipper upon tendering or offering of the shipment to carrier, and the consignee, upon acceptance of delivery of shipment from carrier, shall each be liable for all unpaid charges payable on account of a shipment in accordance with applicable tariffs including, but not limited to, sums advanced or disbursed by a carrier on account of the shipment. The extension of credit to either shipper or consignee for the unpaid charges shall not thereby discharge the obligation of the other party to pay such charges in the event the party to whom credit has been extended shall fail to pay the charges.

(b) The shipper shall assume responsibility in place of carrier for loss or damage caused by inclusion in the shipment of explosives or dangerous articles or goods.

4. In order to preserve your rights to recovery, a claim for any loss or damage, injury or delay must be filed in writing with carrier within nine (9) months after delivery to consignee as shown on face of this contract or in case of failure to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed; and suit must be instituted against carrier within two (2) years and one (1) day from the date when the notice in writing is given by carrier to the claimant that carrier has disallowed the claim or any part or parts specified in the notice. Where a claim is not filed or suit is not instituted in accordance with the above provisions, carrier shall not be liable and the claim will not be paid.

GENERAL RULES AND REGULATIONS

CONTRACT TERMS AND CONDITIONS OF UNIFORM HOUSEHOLD GOODS BILL OF LADING (continued)
STORAGE IN TRANSIT

Storage in transit of shipments is the holding of the shipment in the warehouse of the carrier or its agent, for storage, pending further transportation, and will be done only at specific request of the shipper. For this purpose, a carrier may designate any warehouse to serve as its agent.

2. Subject to tariff rules, payment for accumulated transportation and other lawful charges, at option of carrier, may be required from consignor or consignee at time storage in transit shipment is delivered to the warehouse.

Except as otherwise provided in tariffs, storage in transit shipments may be stored only once and for a period not to exceed one hundred eighty (180) days from date of unloading into the warehouse (including shipments moving on a United States Government Bill of Lading which may be stored for a period of one hundred and eighty (180) days from date of unloading into the warehouse.) When not removed at the expiration of the time limit specified, the warehouse shall then be considered the destination of the shipment and this bill of lading shall be considered the warehouse operator's receipt, and the warehouse operator shall be agent for the shipper and the property shall then be subject to the rules, regulations and charges of the warehouse operator's tariff and supplements on file with the Minnesota Department of Agriculture.

MINNESOTA TRANSPORTATION REGULATION BOARD

FREIGHT ADVISORY COMMITTEE

As to the matters brought before the Freight Advisory Committee by the Minnesota Transportation Board for study and recommendation, we find the following :

1. Issuance of Authority(Permits) based on an application as set forth in Minn. Statutes 221.061(Petition for Certificate; Fee; Hearing) and 221.071(Issuance of Certificate; Vehicle Registration) and 221.121(Permits; Approval Process; Operating Authority; Fee). After careful consideration of the facts and substantial input from the public, the committee, on a vote of 11 for repeal and 1 against feels that the above statutes should be repealed. However there is some concern by the committee members that we would be giving up the safety and fitness standard. We would recommend that Safety and Fitness be maintained by the Dept. of Public Safety.

As to the minority vote it was strongly felt that we should not deregulate for the sake of registration, safety and fitness. We could refine the present program with a simplified procedure which would ensure that all carriers are kept track of, and would prevent the bad apple from being on the Minnesota Highways.

2. Collective Rate making under Minn. Statute 221.165. The committee in a vote of 7 for the Statute to remain as is and 5 for repeal we find the following:

On the majority side it was brought out that with the many different kinds of freight carriers and rates now in place, it has a definite benefit to the small carriers, Associations, and Coops. Not all carriers can serve all points so the need for collective ratemaking is needed.

On the minority side to repeal is the fact that the Federal mandate to do away with all rates, routes, and services on Intrastate traffic. It was also felt that the market place should be the tool to set rates, routes, and services through contractual arrangements between carriers just as is done between carrier and customer. Federal preemption was quite clear on this matter.

3. Review of Suspensions(Minn. Statute 221.185)

The committee in a unanimous vote of 12 to 0 for repeal of this statute.

4. Preside over show cause & desist proceeding based on complaint and hearing, Suspension & Revocation based on violations (Minn. Statute 221.021 & 221.291)

The committee in a unanimous vote of 12 to 0 for repeal of this Statute.

5. Transfer/Lease of Authorities(Minn. Statute 221.081 & 221.151)

The committee in a unanimous vote of 12 to 0 for repeal of this Statute.

OTHER RECCOMMENDATIONS:

1. ENFORCEMENT:

In this area as it pertains to freight carriers, it is felt that there is a duplication of services in the area of Safety & Inspections, The Dept. of Transportation has an inspection staff wit many supervisors and so does the state patrol but with few supervisors. The committee felt it would be wise to merge both of these functions together under the Dept. of Public Safety as they have the expertise both administratively and in enforcement.

2. ANTTIRUST:

The committee could not make any recommendations as to this area due to the lack of knowledge and the fact that the Federal authorities(Justice Dept.) is taking careful consideration of matters in this area. We do however, recommend that we take a wait and see attitude for the future.



Leonard J. Huberty
Chairperson
Freight Advisory Committee

Before
Minnesota Transportation Regulation Board
Subcommittee on Freight Transportation

November 15, 1995

LET'S NOT DEREGULATE SAFETY!

A DISSENTING OPINION

Background of Study

Minnesota Laws 1995, Chapters 248 and 265 provisions providing for a study of the Transportation Regulation Board and its laws and rules is a direct state response to the act of the U. S. Congress in August 1994 to preempt and deregulate state regulations controlling routes and price charged by "for-hire" freight carriers in intra-state commerce. The Congress however recognized the state's interest in regulating for-hire trucking safety and financial fitness.

Now, pursuant to law, the Transportation Regulation Board appointed a subcommittee to study and make recommendations concerning what laws and rules should be repealed, amended or retained and what agency should be assigned the responsibility of the retained and amended laws and rules. However, the time allotted for reporting to the legislature just doesn't allow enough time to thoroughly consider the effects of repealing, amending or retaining the Board's laws and rules. Further, the wording and structure of the questions posed to the freight hauling industry are highly technical and certainly posed in a legalistic form that in light of the federal deregulation and preemption precludes the thorough analysis necessary to seriously consider a course of action at the state level.

Say NO To Deregulation of Safety!

Therefore, it is important to clearly outline the true options left to our state in face of the majority opinion of this subcommittee to recommend state deregulation of safety.

Yes, deregulation of safety, but not explicitly, but implicitly by wiping out the tools necessary to a true safety regulatory program that establishes a level playing field and full accountability of both industry and the regulators.

Proper Safety Controls Require An Open Process

Full accountability requires (1) a proper application, with full ownership and control declared; (2) an open process of authority applications (whatever you call it, e.g., certificate, permit or registration); (3) publication and opportunity for public input (i.e. protest for lack of fitness); and

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When contested, a public hearing before an administrative law judge, and (4) a decision rendered on the public record by the Board. That was done earlier this year in the application of Richard Alexander Burrious, dba Rich Transfer, Docket No. CC162917/A-94-657, (April 5, 1995). The Administrative Law Judge enunciated the position (adopted by the Board on April 5, 1995) that the applicant ". . . must demonstrate, however, that he is "competent" and "qualified" as the terms are used in the definition of "fit and able" within Minn. Rules, pt 7800.0100, Subp. 4 (1993), the administrative Law Judge believes that Mr. Burrious has such a poor driving record in the operation of motor vehicles, including commercial motor vehicles, that it would be contrary to the public safety to grant him operating authority ..."

Since January 1, 1995 of the over 600 applicants, only three other applicants have been ruled unfit and denied authority to engage in for-hire transportation of freight because of a US/DOT unsatisfactory safety rating. How did these decisions come about? These applicants' authority requests were denied, (as in the case of Mr. Burrious), because a former employer, who was conscientious enough to file a protest, participate in a hearing and present evidence of lack of fitness in a public hearing; and in the other three cases because the enforcement agency investigated and submitted evidence of lack of fitness to the Board information disclosing an unsatisfactory US/DOT safety rating.

Background on the Board

When the Department of Transportation (MN/DOT) and the Board was structured by the legislature the law provided for MN/DOT participation before the Board as a "party" in all matters, under consideration by the Board. Unfortunately, MN/DOT has chosen to limit its participation and involvement in proceedings before the Board, including matters involving applications, transfers, extensions, as well as, carrier disputes and complaints.

Since the statutory structure of the state regulatory plan contemplated the participation of MN/DOT in proceedings before the Board and for MN/DOT to design the form of applications, to receive insurance filings, tariffs and provided only MN/DOT with a field force to investigate the conduct and records of applicants, the Board's effectiveness could and has been at times easily compromised by the failure of MN/DOT to provide investigative and enforcement information of violations such as contained in Exhibits A and B. Now, the Board's adversaries are questioning its workload, but apparently not MN/DOT's performance in not presenting to the Board, evidence, records and reports of violations covering carriers safety deficiencies and insurance delinquency. MN/DOT now is according to Elizabeth Parker, MN/DOT's Director of Motor Carrier Services, in testimony before this subcommittee, proposes to act unilaterally and impose civil penalties for insurance delinquency. She is going to use an administrative process that is not open to the public (and industry). We will not know if, when and on what basis, such penalties are imposed or if there is equal application of the civil penalty law? Where do we find the standards for penalties? There are none! MN/DOT in this enforcement area is the cop on the beat and the judge. Will we ever see the

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record and be able to compare cases to determine if the penalties are being imposed on some rational, even-handed basis. Under current law penalties may or may not be assessed in private proceedings, no public notice, no public record, and no written standard, so we will never know if there is unequal application or favoritism in applying or not applying penalties.

The Minnesota Legislature Has Spoken For Regulation

In 1991, the state senate defeated a house bill that provided for total deregulation of freight carriers. Then in 1992, the state legislature passed what its supporters termed a "trucking modernization" bill, a law that totally restructured and made more restrictive the motor carrier regulatory scheme. Then, in August of 1994, the U. S. Congress passed Section 601 of the Federal Aviation Authorization Act providing for federal preemption of the state's authority to regulate the hauling of freight as it relates to routes and price, but continuing full state rights to regulate freight haulers but restricting state authority to safety and financial fitness issues.

All states are permitted to enact laws (not inconsistent with federal standards or limits) for trucking firms electing to participate with anti-trust immunity for joint line rates, freight classification and mileage guides. The fight waged at the federal level for this authority was based on carrier/shipper need and requirements of federal/state anti-trust laws.

Minnesota Continues to Have Regulation Obligations

All states, including Minnesota, continues to have an obligation to provide for the protection of the public in freight and goods movement over our highways and streets.

The state legislature now has an opportunity to clarify current laws to conform with Section 601 and affect economy and efficiency in administration of retained trucking regulations.

The first question to ask is, has anything happened that requires the state to abdicate its responsibility for public safety. The answer is obviously an emphatic "no."

Since there is no reason to abandon state supervision of existing lawful freight hauling requirements, all the committee has to be concerned with is recommending the clarification of law and possible efficiency and economies in the administration of retained regulations.

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CONFORMING STATE REGULATIONS

We should continue the current laws which still provide for new entry applicants to file an application, with complete information on ownership and control of trucking operations, application published with an opportunity for protestants to be heard on the issues of the applicant's compliance with the fit-and-able rules, safety, and financial fitness requirements.

We should continue and expand adjudication powers of the Transportation Regulation Board (TRB) to enhance the separation of enforcement and adjudication powers by providing TRB appeals from an Order of the Commissioner of Transportation, after proceedings before an Administrative Law Judge (ALJ) on proposals to impose civil penalties (which by law may be up to \$10,000 for a single inspection, audit or investigation of alleged violations.) The enforcement agency should not be permitted to hear and decide appeals from its own decisions.

Fairness and continued support of state regulatory activities and the assurance of a level playing field require all contested and disputed applications, complaints and allegations of violations, including but not limited to, authority suspensions and revocations be considered in an open forum, on the record, by an independent agency, that is, the Transportation Regulation Board (TRB). The TRB is a tribunal, selected on the basis of senate confirmation, with staggered six-year terms, for continuity of precedent and policy. No more than two of the three members of the Board may be of the same political party. These issues should not be handled in closed door proceedings by a political appointee of any governor, when the appointee holds office at the pleasure of the appointing governor, in what could be a day to day job.

Duties That Belong To The Board

All applications, insurance, and tariff filings (joint line rates), mileage guides, and classification publications should be filed directly with the TRB. This is necessary to effect efficiency and economy of government operations and to do away with the duplication of activities, double handling of documents and the potential for delays and errors which occurs under existing law and rules.

The statistics of the State Patrol of the Department of Public Safety and Motor Carrier Services of the Department of Transportation discloses that there is substantial insurance delinquency of 870 firms with lapse of insurance for periods ranging from one day to over 366 days. Approximately 7.5 percent of all commercial vehicles are being inspected and only 11.5 percent of interstate carriers are being audited with 33 percent of the inspections revealing an out-of-service defect for carriers. What about inspections of intrastate carriers?

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There is a substantial need to become more efficient and that means merging all MN/DOT motor carrier inspectional transportation representatives and clerical staff into the commercial vehicle section of the state patrol. It seems wasteful to duplicate clerical and inspectional supervisors, legal, grant and engineering personnel. There is no justification for two state agencies being involved in safety regulation of the trucking industry.

Private Carriers Should Not Be Subject To Licensing

Most private carriers (e.g., food, chemical, agricultural manufacturing, wholesaling and retail businesses) are already subject to numerous federal, state and local licensing and regulations covering health, safety (including the Occupational Safety and Health Act (OSHA), and what they don't need is another permit or registration. However, when they use for-hire trucking, they need to depend on the government to assure them of compliance with safety and financial fitness requirements. There is no such need when they are in complete control of their truck operations, insurance and safety.

The question of expanding state motor carrier permit or registration regulations to private carriers requires a thorough study by the legislature, both as to need and costs, as well as its impact on the current for-hire regulatory program. This committee, as far as I know--nor does anyone in the state--have enough information on this subject to make a recommendation.

As a matter of fact, this subcommittee did not take the time, nor did it exhibit the inclination to dissect the current laws that we were supposed to study and propose revisions, that is, make well-informed recommendations. The way the deregulation of safety votes were ramroded through, there was really no real consideration of these complex issues. We didn't evaluate each part of our state's laws and subject them to a thorough study that the legislature requested, therefore, it is ludicrous to call this subcommittee's efforts a study.

RECOMMENDATIONS

Therefore, I recommend the following:

1. The continuation of the Transportation Regulation Board, composed of three part-time members, appointed by the governor for six-year, staggered terms, with no more than two of the three belonging to the same political party.
2. All applications for freight authority (permit or registration) continue to be subject to full disclosure of ownership and control of the trucking operation.

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3. All freight applications continue to be subject to publication, protest for lack of fitness (fit and able, safety and financial requirements). Decisions be made on the record for fairness and equal application of the law.
4. Authority to be applied for only once and, once approved, continue until suspended or revoked. A new applicant's fee be set at \$750 to fund a new applicant's safety audit. Existing freight carriers should be converted and grandfathered in as has been the history without fees.
5. New applicants for authority should also be subject to, and must pass, a state safety audit within the first 180 days of operation, if they do not have a current US/DOT satisfactory rating. Applicants with an unsatisfactory US/DOT or state safety audit should be deemed unfit and denied a permit or registration.
6. Continue authorization on an elective basis for joint line rates, mileage guides and freight classifications and require authority applications, insurance and joint line rates, mileage guides and freight classification be filed directly with the TRB.
7. Continue commercial vehicle identification marking with name and address of carrier.
8. Continue leasing rules in order to maintain accountability of the authorized carriers.
9. Continue rules governing the transfer of controlling interest in the operating or require termination of authority and a new application when there is a change in ownership, including stock transfers.
10. Transfer and merge the Motor Carrier Services transportation inspectional representatives and clerical staff into the Commercial Motor Vehicle enforcement and inspection staff at the State Patrol. Eliminate the positions identified in the Office of Motor Carrier Services as director, supervisor, grants, and staff attorney which is duplicative of existing positions in the State Patrol and Department of Public Safety.

Let's Not Deregulate Safety!

Respectfully submitted

By: Robert Clark Blake, MD

Members of the TRB's Freight Study Subcommittee

To: Betsy Parker
 From: Michael Tharp
 Date: Tuesday, October 10, 1995
 Subject: Insurance Lapses

The information that you requested for your Wednesday AM meeting with the TRB is as follows:

Number of Days between Form K and new Form E effective dates for period July 1, 1994 through June 30, 1995:

0 days	No Lapse	446
1 -	6 Days Lapse	28
7 -	13 Days Lapse	11
14 -	20 Days Lapse	10
21 -	30 Days Lapse	21
31 -	60 Days Lapse	31
61 -	90 Days Lapse	37
91 -	120 Days Lapse	39
121 -	180 Days Lapse	61
181 -	365 Days Lapse	170
366 over	Days Lapse	16

	Total with Lapse	424
		===
	Total Form K for Form E	870

Cancellation effective dates for the period by month are:

07/94	75
08/94	89
09/94	86
10/94	45
11/94	54
12/94	70
01/95	92
02/95	74
03/95	67
04/95	67
05/95	66
06/95	85

	870

Suspensions For Liability Insurance for period: 1003

Cancellations For Liability Insurance for period: 390

NOTE: The above two figures include interstate and intrastate suspensions and cancellations.

cc: Chris Conway

CARRIER SAFETY INFORMATION

1. INSPECTIONS

APPROXIMATELY 330,000 VEHICLES
25,000 ARE INSPECTED ANNUALLY
7.5% ARE INSPECTED

2. AUDITS

APPROXIMATELY 7,000 INTERSTATE FOR-HIRE AND PRIVATE
CARRIERS
796 AUDITED FY94
11.5% AUDITED

APPROXIMATELY 3,500 INTRASTATE FOR-HIRE CARRIERS
0 AUDITED FOR SAFETY
UNKNOWN NUMBER INTRASTATE PRIVATE CARRIERS
0 AUDITED FOR SAFETY

3. 33% OF INSPECTIONS REVEAL AN OUT-OF-SERVICE DEFECT FOR BOTH
PRIVATE AND FOR-HIRE CARRIERS.

4. SEE ATTACHED CHART

FINAL REPORT

20 December 1995

Rail Advisory Subcommittee Recommendations to the Transportation Regulation Board Regarding Rail Functions of the Board

INTRODUCTION

The Rail Advisory Subcommittee was comprised of three interest groups -- rail management, rail unions and rail shippers. These three and sometimes divergent interests conducted a good faith negotiation and were able to reach consensus on resolution of most of the Transportation Regulation Board's (TRB) functions as they relate to rail. However, in some cases, there was unresolvable disagreement. Those involved in the negotiation believed it was inappropriate for the Rail Advisory Subcommittee (RAC) to take hard votes on some issues because the outcome would have depended on who was present at a particular meeting. In addition, the group felt that some issues required policy decisions more appropriately resolved by the Legislature. Therefore, below you will find our recommendations divided into three categories: (1) TRB functions to be eliminated; (2) TRB functions to be transferred to MnDOT; and, (3) TRB functions upon which the RAC could not agree. Each recommendation is followed by the RAC's reasoning, which is printed in *italics*.

TRB FUNCTIONS TO BE ELIMINATED

- A. **Minn. Stat. §218.025.** Make schedules of intrastate rates to provide for lower costs in connection with the transportation of sand, gravel, crushed rock, and other materials to be used in the construction and maintenance of public roads and streets.

This is an antiquated statutory provision the subject matter of which the TRB presently has no jurisdiction because these contracts are negotiated in the private sector and / or between other units of government. While the TRB retains jurisdiction over intrastate movement of construction materials, few, if any, of the materials specified in this provision are currently hauled by rail. TRB staff cannot remember or find records of any actions taken under this provision.

- B. **Minn. Stat. §218.041, Subd. 2 & 7, US Code 49 10101 to 11917, and certification authorized by the Interstate Commerce Commission.** Review rate filings for

reasonableness in accordance with federal standards.

This provision has never been invoked and is one which the federal government no longer provides state entities like the TRB with any jurisdiction to alter rates. In addition, although the TRB retains jurisdiction over intrastate movement of freight, rail management estimates that the level of business which is truly intrastate and not subject to federal preemption is 5% or less (a de minimis amount). Current TRB staff cannot remember or find records of any recent action taken under this statute, other than infrequent historical research.

- C. **Minn. Stat. §218.041, Subd 4.** In response to a petition, prescribe ample facilities by track connection, joint use of tracks, freight platforms and depots, warehouses, docks.

This is another antiquated provision. No petitions have ever been filed under it and the federal government no longer grants any jurisdiction. Current TRB staff cannot remember or find records of any recent action taken under this statute.

- D. **Minn. Stat. 218.041, Subd. 4.** Determine the proportionate share of each company in the cost of providing connecting and transfer facilities, if parties fail to agree.

This is yet another obsolete provision. No petitions have ever been filed under it and the federal government no longer grants any jurisdiction. Current TRB staff cannot remember or find records of any recent action taken under this statute

- E. **Minn. Stat. §218.041, Subd. 4.** Prescribe reasonable rules for the handling of freight, passengers, etc.

This provision hasn't been invoked since the 1950s. Under the federal Aviation Authorization Act, this provision is preempted by federal law.

- F. **Minn. Stat. §218.041, Subd. 4.** Grant relief, upon petition, from the operation of principles established in Minn. Stat. §218.021, Subd. 1 (5), (6) & 7).

Repeal of the rate review provisions makes these powers obsolete. The provision containing the "as prescribed by law" sections to which this statute refer to have already been repealed.

- G. **Minn. Stat. §219.383.** Upon petition of a city council or railroad, establish speed limits over a crossing.

This power was preempted by the Federal Railroad Administration upon invalidation by the U.S. Supreme Court of a similar statute in another state. CSX Transportation, Inc. V. Easterwood, 113 S.Ct. 1732 (1993).

- H. Direct construction, maintenance and operation at any points prescribed by law of all side tracks and reasonable facilities connecting any road with any grain warehouse, dock, wharf, etc. (Minn Stat. §218.041, Subd 4)

This is another antiquated provision. No petitions have ever been filed under it and the federal government no longer grants any jurisdiction. Current TRB staff cannot remember or find records of any recent action taken under this statute.

TRB FUNCTIONS TO BE TRANSFERRED TO MnDOT

Generally, rail management believes that it makes sense to locate all remaining state rail authority in MnDOT's Office of Railroads & Waterway because of ease in administration for all and the rail expertise the Office brings to rail matters.

Generally, rail unions have little faith in what they believe to be a highly politicized DOT. Rather, the unions want to retain some form of a TRB to ensure that the following provisions do not fall between the bureaucratic cracks.

Generally, rail shippers believe that functions currently conducted by the TRB but deemed essential should be centralized under the control of one state agency.

- A. **Minn. Stat. §218.041, Subd. 4.** Direct repair, reconstruction or replacement of any in adequate or unsafe trackage, structure or facility.

Although the Federal Railroad Administration already regulates trackage under 49 Code of Federal Regulations, Chapter 213, the RAC agreed to maintain this provision but to transfer it to MnDOT's Office of Railroads & Waterways Division. This office currently conducts numerous track inspection functions in addition to those performed by the Federal Railroad Administration (FRA).

The RAC also recommended that the words "track-related" be inserted before "structure" to make the statute clearer.

- B. **Minn. Stat. §218.041, Subd. 4.** Hold hearings to determine necessary maintenance, improvement or closing of grade crossings.

The maintenance, improvement, revision or closing of grade crossings -- and grade crossing warning devices-- are areas where MnDOT's Office of Railroads & Waterways has more than adequate experience, background and responsibility for protecting the public. Because the Office is charged with public safety and statewide planning missions, it is the most appropriate agency to deal with grade crossing-related issues. In

cases where an agreement cannot be reached by the affected parties, a hearing before an administrative law judge is the best way to resolve disputes.

- C. **Minn. Stat. §219.23.** After investigation from the commissioner, or upon complaint, order railroad to provide crossing guards at a grade crossing if it is found necessary to protect the public.

See reasoning in the above provision. In addition, the RAC noted that MnDOT competently handled these matters from 1976 - 1982.

- D. **Minn. Stat. §219.24 & 219.40.** Order other necessary safeguards at grade crossings to protect the public.

See reasoning in the above provisions.

- E. **Minn. Stat. §219.681 through 219.741.** Hold hearings and authorize track abandonments and removals.

The TRB only has authority over spur, industrial or team trackage (mainline tracks are covered by federal law). During the past four years, the TRB has acted on petitions as follows:

*1992 - 5 petitions (unknown feet of trackage)
1993 - 9 petitions (36,934 feet of trackage)
1994 - 2 petitions (4,563 feet of trackage)
1995 - To date, 6 petitions filed (5,743 feet trackage approved for removal,
one petition pending involving 960 feet)*

Rail management believes that, because of its expertise on Minnesota's rail trackage, the Office of Railroads & Waterways should handle these issues.

Rail unions believe these matters call for a nonpartisan decision by a nonpartisan tribunal and thus would like to see a version of the TRB decide these issues.

- F. **Minn. Stat. §222.632.** Hold hearings and make determinations in the right of first refusal for sale of property within right-of-way.

Retention of this provision is important to shippers who noted that the right of first refusal does not assure a price but rather balances the playing field so that there is an established procedure for valuing the property should a dispute arise. Because MnDOT's Office of Railroads & Waterways handles many rail issues, the shippers are comfortable transferring this power to that agency. Disputes could be resolved by an

administrative law judge.

TRB FUNCTIONS UPON WHICH THE RAIL ADVISORY SUBCOMMITTEE COULD NOT AGREE

A. Minn. Stat. §219.47. Issue variances for clearance standards.

The TRB reviews and deliberates on petitions for variances from the standard height and width clearance areas. During the last four years, the TRB has acted on petitions as follows:

*1992 - 1 petition
1993 - 10 petitions
1994 - 1 petition
1995 - To date, six petitions*

Rail management noted that prior to 1980, Minnesota law required that applications for clearance variances were filed with MnDOT. Railroads maintain that a similar procedure could be reestablished whereby MnDOT would first evaluate the request, and if there is still a concern that an unduly hazardous condition would be created by granting the variance, further discussions could be had with the party making the application. In cases where agreement cannot be reached, a hearing before an administrative law judge would be the best way to resolve the issue.

Rail unions noted that the TRB has always provided an avenue for safe and reasonable change, and the TRB has administered fairly in this area. Therefore, they wish to retain this power in the TRB.

B. Minn. Stat. §219.85. Hold hearings and authorize change, reduction or elimination of agency services.

Although the TRB has had some major cases in the past involving agency closings, the activity recently has been minimal. Most agencies have already been consolidated or moved out of state.

Because there are only a few agencies left, rail management deems this provision obsolete. The enormous changes in technology have made person-to-person contact inefficient and unnecessary in many sectors of the economy, not just rail.

Rail shippers noted that with the revolution in technology, they are used to dealing with rail agents via telephone or facsimile. While most shippers decided they had no opinion

on this provision, the Minnesota Farmers Union agreed with labor that at least the power to order the agencies re-opened in the future should be retained.

Rail unions want to retain this power in the TRB. In addition, the rail unions would like to see the statute's scope greatly enhanced as follows:

219.85 RAILROAD STATIONS, AGENCY SERVICE.

Agency service at common carrier railroad stations must be ~~that required by the public convenience and necessity.~~ required for adequate service. ~~No station may be abandoned nor agency service reduced, discontinued, established, or expanded without the approval of the board after public notice and opportunity for hearing is afforded. No agency station or centralized agency station shall be abandoned without the approval of the Transportation Regulation Board or its successor agency.~~ The board shall consider, if submitted, whether the abandonment or reduction will not substantially reduce the level of safety, health or welfare of the railroad's customers, its employees, or the public. The board, or its successor agency, on its own motion or upon petition of an interested party, may order the agency service at a station established, reestablished, or expanded after notice and an opportunity for a hearing. When an application has been filed to close or abandon a station or to change station agency service, the board shall publish notice of the application. The notice must state that interested persons may object to the application within 30 days after publication of the notice. On determining that a public hearing is unnecessary for resolution of the material issues relating to the application, the board, no sooner than 30 days after publishing the notice, may enter an order finally disposing of the application. On determining otherwise, the board may not act on the application until a contested case hearing has been conducted under chapter 14.

Rail unions believe there are two main reasons to retain jurisdiction for compelling agency service. The first is the state's interest in requiring basic adequate service where the majority of shippers are "captive" to a particular railroad. The second reason is less obvious but far more significant: removal of an agency can often be the precursor to abandoning a line. The rail unions maintain that: (1) rail management wants to get rid of "spaghetti" lines -- the lower density branches and secondary lines that resemble spaghetti on a map; (2) even though most of these lines are profitable, rail management would still prefer to be rid of them because mainline through (or "bridge") traffic is more profitable and far less bother from an administrative standpoint; (3) there is an historic pattern in which first the agency goes, service deteriorates, smaller customers are ignored and then switch to trucks, and the line is ultimately abandoned; and, (4) states cannot control abandonment as such, but they can and must control the preconditions which lead to abandonment.

Rail unions also believe that state control of agencies and service is not preempted. They note that even industry commentators agree that although the federal Staggers Rail Act

of 1980 preempted state rate making authority, no other state powers were explicitly or impliedly preempted or eliminated. See, e.g., §214 of the Staggers Act and Preemption of State Regulation of Intrastate Rail Transportation, 53 Transportation Practitioners Journal 1986. In a series of decisions, the courts have strongly taken the direction of limiting the preemptive effect of Staggers to state rate making authority and leaving other state functions to reside in the states. The cases are typified by Illinois Commerce Commission v. ICC, 879 F.2d 917 (DC Cir. 1990) leaving authority with the states over abandonment or maintenance of service on spur lines.

Rail management notes that these proposed changes are a radical expansion of the state's role in running a railroad company. Reductions in agency service have nothing to do with abandoning lines. In fact, abandonments are heavily regulated by the federal government and agency reduction is a cost calculation already compelled upon rail management. Rather, reductions in agency service reflect the current technologies (telephone, facsimile, computer) that are integral to most businesses, including railroads. Finally, the proposed statute is probably invalid because it would affect a railroad's operations in other states, reaching far beyond the scope of the Minnesota Legislature's powers.

INDUSTRY ADVISORY COMMITTEE

To: The Transportation Regulation Board of Minnesota

Motor Carrier Transportation Regulatory Recommendations

This report is composed of four parts dealing with motor carrier transportation covering freight, passenger and household goods movers. The rail recommendations are attached.

- A. It is our recommendation for freight transportation regulations that:
1. An Independent Regulatory Board for transportation be continued. The Board could be the current Transportation Regulation Board or the current Public Utilities Commission (which formerly handled transportation matters.)
 2. All motor carrier applications continue to be subject to publication and protest for lack of fitness and ability.
 3. All applications for freight transportation authority shall require disclosure of ownership and control of the business.
 4. Freight transportation authority applications, insurance, joint line rates, mileage guides, freight classification and public complaints shall be filed directly with the regulatory agency described in No. 1 above. Transfer clerical staff who now handle these filings to the regulatory agency described in No. 1 above.
 5. Motor carriers with an existing certificate, permit or license shall continue in effect until ownership changes or it ceases operations.
 6. New applicants for freight transportation motor carrier authority shall be subject to a US/DOT satisfactory rating or a state safety audit to be conducted within the first 180 days of operation. Motor carriers with an unsatisfactory rating or safety audit shall be deemed unfit and denied a permit or registration.
 7. Continue commercial vehicle identification marking with name and address of carrier and continue leasing rules in order to maintain accountability of the motor carriers.
 8. In the interest of efficient, economic and effective law enforcement, the transportation inspectors and clerical staff involved in enforcement should be transferred from the Department of Transportation to the Department of Public Safety.

B. It is our recommendation for the household goods regulations that:

The recommendations of the Household Goods Subcommittee Majority Report be adopted.

C. It is our recommendation for the passenger regulations that:

The recommendations of the Passenger Subcommittee Majority Report be adopted.

D. It is our recommendation for the rail regulations that:

The recommendations of the Rail Subcommittee Majority Report be adopted.



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Sent by FAX (612)282-5431
Hard copy by U.S. Mail

December 20, 1995

Richard Helgeson
Lyle Mehrkens
Tim Perry
Minnesota Transportation Regulation Board
Livestock Exchange Building
100 Stockyards Road
South St. Paul, MN 55075

Subject: The Board's study pursuant to L. 1995, Chapters 248 and 265 of its regulatory laws and rules

Gentlemen:

Yesterday, by a substantial majority vote of the members of the Board's appointed Industry Advisory Committee, a committee appointed pursuant to state advisory committee laws requirements (limited to 15 persons), adopted recommendations to the Board concerning Minnesota's regulations relating to motor carriers and rail.

The minority at the meeting alleged that the Industry Advisory Committee had been granted no authority other than to accept the reports of each subcommittee. Obviously, the majority in a roll call vote disagreed and, I believe, properly so.

The Board, when it appointed the Industry Advisory Committee, contemplated compliance with laws governing advisory committee size. For the Industry Advisory Committee to accept the subcommittee majority and minority reports and ignore other sources of information and the reports would not only violate the Board's "charge," but also any meaningful role for this committee.

The third paragraph of the "charge" provided for this committee "... to invite the participation of any and all resource people it so chooses to avail itself of the expertise of these persons and involve their input into the proceedings."

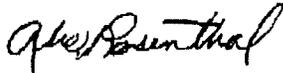
If the Industry Advisory Committee was restricted to merely an editorial role, what is the meaning of the provision of the third paragraph of the charge? Further, the report of the majority of the Freight Subcommittee is inaccurate in Paragraph 2 of the report. The majority voted on November 1, 1995 to maintain supervision of collective rate organizations (antitrust) in connection with joint line rates, mileage guides and freight classification. The report also fails to disclose what should be done with these and other existing freight laws and rules once the Board's existence is terminated. It leaves a substantial vacuum in the law that is incomprehensible and unacceptable.

Minnesota Transportation Regulation Board
December 20, 1995
Page Two

However, the minority report dealt with all facets of the statutory assignment and provided substantial rationale for its position. The Industry Advisory Committee report obviously took the most acceptable parts from both the majority and minority reports and fashioned its report.

Therefore, I voted to support the Merritt/Rubenstein motion which passed and I believe the Board should also support it because it is consistent with the "charge" given this committee. Committee members Grant Merritt and Samuel Rubenstein, both lifelong transportation practitioners, have between them nearly 60 years of experience in these matters representing hundreds of motor carriers and shippers professionally. Their comments and advice carries great weight with the majority of the committee.

Respectfully submitted,



Abe Rosenthal
Member of the Industry Advisory Committee

December 21, 1995

Members Transportation Regulation Board
254 Livestock Exchange Building
100 Stockyards Road
South St. Paul, MN 55075

SUBJECT: Industry Advisory Committee -- Minority Report

The undersigned members of the Industry Advisory Committee do not concur with the report adopted by the Committee on December 19, 1995 to the extent it disregards and overturns the recommendations of the Freight Subcommittee.

The Freight Subcommittee spent many hours discussing the issues and preparing their report. They heard testimony from interested persons and agency representatives; they also reviewed responses resulting from the Board survey. With overwhelming majorities, they voted to recommend the repeal of the Board's remaining functions relating to freight carriers.

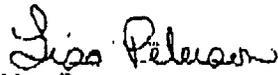
The Industry Advisory Committee, on the other hand, spent very little time discussing any of the issues relating to freight transportation. We heard no testimony nor did we receive any information about the issues the Freight Subcommittee debated. Yet despite this lack of information the Advisory Committee voted to reverse the Freight Subcommittee's report. We feel it was improper to so completely disregard the Freight Subcommittee's work and recommendation.

We respectfully request that this minority report be made part of and submitted with the Industry Advisory Committee report.

Signed,



Carol Ann Sather
Farm Credit Leasing Service Corp.



Lisa Peterson
Minnesota Trucking Association



Leonard Huberty
Freight Subcommittee Chair



Sarah Janacek
Spano & Janacek



Bob Krogman
MN Petroleum/Marketers Assn.



Jim Issacson
Roadrunner Transportation

National Conference of State Transportation Specialists

Whitefish, Montana

June 18-22, 1995

Synopsis-Prepared by Presentations-Timothy S. Perry

"State by State Report"

Arkansas

No transfer of functions; legislature eliminated need factor for household goods permit.

Alabama

Public Utilities Commission, 3 elected commissioners, 130 staff, 35 in transportation division, rail safety, rates and services, motor carriers required to have a certificate of compliance based on financial fitness, safety and insurance. After January 1, 1995, a flurry of new applications - 80% increase, 1500 property carriers. Legislature still in session: (1) bill introduced to deregulate household goods and passengers; (2) enforcement would be transferred to State Patrol; (3) insurance filing would remain in PUC.

Delaware

DOT regulates passenger carriers - two hearings per month.

Connecticut

DOT is transferring staff, as of Oct. 1; Single State Registration System ("SSRS") shifted to Motor Vehicle division along with over dimension permits. As of July 1, 1995, 200 new property carriers. PUC has rail, passengers and HHG - an industry which desires continued regulation.

Colorado

PUC - new safety/insurance program for all carriers as of May 31, 1995. Law provides for tax credit for property carriers as write off. Number of property carriers currently 750 - expected to double.

California

PUC reorganized September 1994 - 8 million dollars reduction in budget. Safety and Enforcement division - 80% was safety staff - which was reduced by 30%. Regulatory functions moved to State Patrol. Governor created Task Force January 1995 which was long on

rhetoric but short on substance and a lack of consensus. Small property carriers and HHG wanted to remain under PUC. UPS, the largest carrier in state, wanted PUC. The PUC will continue until 1997. Approximately 2,000 new property carriers after January 1, 1995.

Idaho

PUC survived bill to abolish, but insurance filing went to DOT and safety enforcement to State Patrol. Interim committee established to study "transportation". Eliminated one staff rate position.

Georgia

Public Service Commission - no changes. 500-700 new property applications. Prepared legislation to conform to federal preemption which was killed by 11th hour amendment. Move to downsize - 10% cut in budget.

Illinois

Operated under rulemaking procedure then an agreed-upon bill. Reduced property cab card fees from \$25 to \$5 per vehicle. Doubled HHG cab cards to \$50. Still believe in quasi-judicial functions to suspend or revoke permits. 1801 new applications of which 1200 have been approved - all as temporaries. Interested in setting up national electronic insurance filing with industry.

Iowa

DOT - reorganized - transferred rail functions into Planning Agency. 35-38 rail cases per year. Motor carrier - no changes, but eliminated rate filing. 500 new property carriers.

Kansas

Corporation Commission - Property changed to Certificate of Public Service based on fitness and knowledge in safety. Issue remains as to HHG and passengers. Present Governor from a motor carrier family.

Kentucky

One-stop shopping since March 1992. 300 staff positions in enforcement. Legislature meets every 2 years.

Louisiana

Public Service Commission - legislature still in session, proposal to transfer insurance filing to Public Safety Motor Vehicle division.

Maine

Deregulated 1981. State Patrol has insurance and safety functions.

Maryland

Public Service Commission budget funded under assessments on utilities. Motor carriers construed to be utilities. Inspectors do terminal inspections (90% of workload). Passengers a growth industry - 100 applications a year. Workshop recently convened regarding consolidation of functions. Legislature meets once every two years.

Michigan

Public Service Commission - still regulating HHG. 600 new property applications. Transportation functions mandated to be transferred by Oct. 1, probably to Secretary of State or DOT.

Minnesota

History of DOT/TRB. Review of legislative session. Board study.

Mississippi

Public Service Commission - no staff reductions - 200 new property applications.

Missouri

Public Service Commission - bills introduced which failed to abolish and cut appropriations. Eliminated 11 positions. Reviewed HHG rates for first time in 6 years - 750 new property applications.

Montana

Public Service Commission - bill introduced to totally deregulate - fought and prevailed by passengers, HHG and solid waste haulers. SSRS - moved from PSC to DOT July 1.

Nebraska

Public Service Commission - bill introduced to abolish agency which was supported by railroad was barely defeated.

Nevada

Public Service Commission in turmoil - legislature still in session. Registration with DPS and DOT 50% lay off of transportation staff.

New Mexico

Regulating HHG and passengers.

New York

PSC transferred to DOT 1971. 400 new applications, four-fold increase.

North Dakota

DOT Motor Carrier assumes HHG regulation July 1, 1995. HHG powerful lobby in state legislature.

North Carolina

Being left alone - still regulating HHG and passengers.

Ohio

Reorganization as of Oct. 1, 1995; new mega-agency under Department of Public Safety. PSC inspectors (62) assigned to State Patrol. PSC attempted to administratively deregulate HHG, overruled by State Supreme Court. 800 new property carriers.

Oklahoma

Commerce Corporation - passed interim rules Jan. 1995. 250 new property applications. Private carriers will be brought into vehicle registration program Nov. 1, 1995.

Oregon

January 1, 1996, PSC transportation functions transferred to DOT. 6000 existing carriers. 600 new carriers. Weight mile tax.

Pennsylvania

Reduced filing fee, safety standard only, 500 new property statewide applications. Application form- unchanged. Terminal audits for all carriers. HHG audited once every three years. No staff reductions.

Rhode Island

No legislature pending to abolish PUC. Hearing required on all applications - commodity specific applications. Aggressive enforcement - one denial on new carrier.

South Carolina

PSC - 14 transportation staff, one position - SSRS transferred to Revenue.

Tennessee

PSC - abolished - sunsetted in one year. Safety functions to State Patrol including over dimension. Rail functions to DOT. Create new regulatory authority with 3 appointed Directors (salary reduced from PSC level). Appointments to concurrent 6-year terms made by Governor, Speaker of House and Senate.

Texas

Railroad and Warehouse Commission transportation functions to DOT. Part of safety to DPS.

Virginia

July 1, 1995 - Registration functions transferred to DPS. Safety to Patrol.

West Virginia

PSC requires insurance registration only. Property carriers have doubled. Maintain rail functions, passengers and solid waste haulers.

Washington

PUC - 112 positions before preemption - 30 remaining. Safety to State Patrol - January 1996. PUC retains passenger and HHG.

Wisconsin

January 1994 all transportation functions to DOT.

Four of states present regulate brokers. Six to eight regulate taxicabs. Oklahoma requires private carriers to file insurance.