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MOTOR CARRIER REVISIONS

Senate Bill 581 (Substitute H-1)
First Analysis (11-10-93)

Sponsor: Sen. Dave Honigman
Senate Committee: Labor
House Committee: Transportation

THE APPARENT PROBLEM:

The Motor Carrier Act provides for the regulation of persons licensed to transport goods from points of origin in Michigan to elsewhere in the state or across state borders. Among other things, the act authorizes the Public Service Commission (PSC) to oversee various aspects of the motor carrier industry, such as whether persons are capable of operating safely as carriers and in what capacity, whether rates charged are reasonable, and if collective rate-making agreements between carriers generally serve the public good. After the federal government deregulated trucking on the interstate level in 1980, the legislature responded by amending the Motor Carrier Act to incorporate some of the concepts instituted at the federal level. For some people, however, Michigan did not go far enough in breaking down the barriers in the act that discourage new motor carriers from entering the market. Critics of current law believe it helps to protect established carriers by making it more difficult for others to enter the market or expand into new areas, which works to reduce competition in the industry. Others point to studies suggesting the act works to discourage investment in the state, especially by larger manufacturers. Some people believe the state's trucking regulatory environment, in fact, may have contributed to General Motors' decision to close its vehicle assembly plant located at Willow Run and relocate the work performed there to a plant in Texas. In an effort to make Michigan's economy more competitive, to the benefit of both the state's business community and its individual consumers, legislation has been proposed to revise the Motor Carrier Act.

THE CONTENT OF THE BILL:

The bill would amend the Motor Carrier Act to add new provisions governing certification requirements and procedures for a motor common carrier or a motor contract carrier; to revise language regarding rates, charges and fares that could be imposed by

motor carriers; to add provisions governing the transport of household goods; to reduce the Public Service Commission's (PSC) ability to disapprove a collective rate-making agreement; and to require the PSC to supervise and regulate each motor carrier's service and safety of operations.

Purpose and policy. The act declares that it is the "purpose and policy of the legislature...to confer upon the commission the power and authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire" on Michigan's public highways. The act lists several reasons for granting the PSC these powers, among which are to promote competitive and efficient transportation services, to meet the needs of motor carriers, shippers, receivers, and consumers, to allow the most productive use of equipment and energy resources, and various others. The bill would add to this list 1) to promote entrepreneurship in the motor carrier industry by allowing greater contract carrier economic and entry flexibility and 2) promote the use of jointly considered and initiated rates, classifications, divisions, allowances, charges or rules of motor carriers under commission-approved agreements.

Definitions. Under the act currently, a "motor contract carrier of property" is "any person engaged in the transportation by motor vehicle of property for hire upon the public highways of this state other than as a motor common carrier of property, either directly or through any device or arrangement." The bill would revise this definition to specify that a motor contract carrier would mean any person that provided motor vehicle transportation upon state highways for a series of shipments under continuing agreement of at least one year with a person, with the agreement providing for the assignment of motor vehicles exclusively for each such person while the vehicle was in the service of that person and being designed to meet the distinct

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needs of each such person. Lower rates, in and of themselves, would not constitute a distinct need.

Under the new definition, a motor contract carrier that possessed a motor common carrier certificate of authority of the appropriate class could commingle authorized contract carrier shipments while providing common carrier service exclusively for the person(s) for whom contract service was provided. A motor contract carrier authorized to transport contract shippers could commingle such authorized packages or articles weighing 70 pounds or less in the same vehicle with commodities transported as a common or contract carrier, without assigning any vehicle exclusively for the person(s) for whom contract service was provided. A motor contract carrier authorized to transport coin, currency or food stamps for one or more contract shippers could commingle such authorized goods in the same vehicle with commodities transported as a common or a contract carrier without assigning any vehicle exclusively for the person for whom contract service was provided.

Certification. Currently, the PSC must issue a certificate to an applicant if it finds that certain criteria are met. One of them provides that, based on evidence provided, the proposed service "will serve a useful public purpose, unless the commission finds, on the basis of evidence presented by a protestant objecting to" certification that authorization would create "excess service." The bill would revise this to say that a proposed service would have to serve a "required public purpose." The commission could, without being presented with evidence from someone protesting issuance of the certificate, withhold certification if it found that the transportation would create excess service. Also, in determining whether excess service would be created by a proposed service, the burden of proof would fall on the person protesting the certification. The bill also would add to the list of criteria that would have to be met that the proposed service be consistent with the transportation policy set forth in the act.

The act requires an application for a certificate to state the applicant's experience as a motor carrier, the ownership and condition of the equipment and physical property to be used, and other information that the PSC requires. The bill would require an application to state, in addition, that the vehicles of the applicant had passed an inspection within the previous 12 months, the support by

shippers/receivers for the proposed service, and the relation of the proposed service to the "required public purpose" to be served. In addition, the commission could request supplemental information from an applicant regarding accident records issued for the previous 12 months, including citations, to the applicant or his or her drivers when that information was considered necessary to make findings regarding the applicant's fitness to be certified. Similar criteria would be established for both motor common carriers and motor contract carriers.

Motor contract carriers. The act authorizes the PSC to determine, based on various criteria, whether someone who applies to operate as a motor contract carrier is fit to do so. Among other things, the commission must determine whether the proposed operation of an applicant may reasonably be expected to endanger or impair the operations of another authorized carrier that was protesting the application, to an extent contrary to the public interest. The bill would delete this as one of the criteria. The bill also would delete similar provisions that relate to the granting of an application to operate as a motor contract carrier by the commission.

The act currently requires a motor contract carrier to establish and file with the commission actual rates and practices of the carrier and its rules related to the rates. The bill would add to this that a motor contract carrier could not be required with rate filings to submit evidence of the revenues and expenses to be realized in the performance of its authorized functions. A motor contract carrier would have to make available to the PSC its complete contracts, but would not have to file them with the commission. A commission member, or a clerk, officer or employee of the state could not divulge or make known, in any way whatsoever, to anyone the rate filings of a contract carrier unless a complaint had been brought by order of the commission against a carrier alleging that one or any of its rates or practices--or rules that related to a rate or the value of service under that rate--were predatory and violated the act's provisions. In addition, rate filings of a contract carrier would be exempt from disclosure under the Freedom of Information Act unless a complaint was brought by order of the commission against a contract carrier.

The commission would have to review all rate filings to determine that they were not predatory. The act

currently provides that if it finds a rate, practice or rule related to a rate in violation of the act, the commission "may" prescribe the minimum rate, practice, or rule. Under the bill, the rate, practice or rule would have to be found (in addition to being in violation of the act) to be predatory, and the commission would be required to prescribe the minimum rate, rule or practice. The commission, in making a predatory rate determination and prescribing the appropriate minimum, must now consider (among other criteria) the cost of the transportation provided by the motor carrier. The bill, instead, specifies that the commission would have to consider all revenues and costs associated with one specific contract or appendix to it.

Rates, fares, charges. The act currently specifies that all rates, fares and charges made by any motor common carrier shall be just and reasonable, and cannot be unjustly discriminatory, prejudicial or preferential. The bill would add to this that contract motor carrier rates, fares and charges made by common motor carriers holding both common carrier and contract carrier authority could not be considered by the PSC to be unjustly discriminatory, prejudicial or preferential in determining compliance with this provision. Nothing in the act would prohibit a carrier from operating both as a motor common carrier and a motor contract carrier.

The act prohibits the commission from investigating, suspending, revising or revoking any rate, fare or charge proposed by a motor common carrier because it feels it is unreasonably high or low provided certain criteria are met. One criteria is that the aggregate of increases and reductions in any rate (or fare or charge) should not be more than 10 percent above or below the rate in effect one year before the effective date of the proposed rate. The bill would raise this threshold to 20 percent. In addition, the act currently allows the commission, by order, to increase or reduce this percentage if it finds that certain conditions exist; the bill would delete all of these provisions.

The act currently specifies that a change cannot be made to any general rate, fare, charge or classification unless advance notice (either 30 or 45 days prior to the change, depending on the change) is given to the PSC and the public. The bill specifies that a change in rates, fares, charges or classifications made under its provisions would require 10 days' prior notice.

Collective rate-making. The act provides that if more carriers wish to jointly consider and initiate rates (etc.), the joint considerations and initiations can only be conducted under an agreement that is approved by the PSC. With certain exceptions, the commission must by order approve the agreement if it finds that it conforms to the transportation policy set forth in the act. The commission's approval may be granted only upon the terms and conditions it feels are necessary to enable it to grant its approval in accordance with the policy. Under the bill, the commission would have to approve an agreement if it found it conformed with the act's requirements. In addition, the bill specifies that the commission could not eliminate collective rate-making by application of its authority under this section of the act.

Transport of household goods. A motor common carrier providing transportation of household goods subject to jurisdiction of the commission could (subject to certain provisions contained in the act, including those governing general tariff requirements) establish a rate for the transport of household goods that was based on the carrier's written, binding estimate of charges for providing such transportation. A rate established under this provision would have to be available on a nonpreferential basis to shippers and could not result in charges to shippers that were predatory.

Binding estimates would have to be furnished in writing to the shipper or other person responsible for payment of the freight charges, and a copy of each such estimate would have to be retained by the carrier as an addendum to the bill of lading. All estimates would have to clearly indicate on their face that an estimate was binding on the carrier and that the charges shown were the charges that would be assessed for the identified services. Binding estimates would have to clearly describe the shipment and all services to be provided.

Under the bill, motor common carriers that transported household goods could provide nonbinding estimates of the approximate costs that would be assessed for the service. Nonbinding estimates would have to be reasonably accurate, and estimates of approximate costs would not be binding on the carriers that provided estimates. The final charges on shipments moved on nonbinding estimates would be those appearing in the carriers' tariffs applicable to the transportation. Nonbinding estimates, if provided, would have to be furnished

without charge and in writing to the shipper or other person who was responsible for paying the freight charges. A copy of each estimate would have to be retained by the carrier as an addendum to the bill of lading, and all such estimates would have to clearly indicate on their face that the estimate was not binding on the carrier and that charges shown were approximated for the services identified in the estimate. Nonbinding estimates would have to clearly describe the shipment and all services to be provided. Motor common carriers furnishing nonbinding estimates would have to enter the estimated charges on the bill of lading.

At the time of delivery of a collect-on-delivery shipment (except when the shipment was delivered to a warehouse for storage at the request of the shipper) on which a nonbinding estimate of the approximate costs was furnished, the carrier, upon request of the shipper, would have to relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and would have to defer demand for payment of the any remaining charges for a period of 30 days following the date of delivery.

Safety regulations. The bill would require the PSC to supervise and regulate the service and safety of operations of each motor carrier. The commission could promulgate rules for the purpose of promoting safety upon highways and the conservation of their use. Upon the PSC's request, the Department of State Police would have to review the operation of an intrastate motor carrier to determine whether it was in compliance with applicable safety-related laws and rules and would have to issue to the commission a report within 60 days after completing its review. The PSC, in cooperation with the department, would have to develop and implement by rule or order a motor carrier safety rating system within 12 months after the bill's effective date. In the rating system, an unsatisfactory rating could not be imposed without an on-site safety review being conducted by the department.

Temporary certification. The act currently allows the PSC to grant to a motor common carrier or a motor contract carrier a temporary certificate for a particular service in order to enable the provision of service for which there is an immediate and urgent need to points within a territory that have no motor carrier service capable of meeting that need. The act limits a temporary certificate's validity to 30

days, unless permanent authority is granted after a hearing. The bill, instead, would allow a temporary certificate to be valid for any length of time specified by the PSC. Further, under the bill these provisions would only apply to a motor common carrier.

As for motor contract carriers, the bill specifies that--upon proper application which would have to include specific definition of permit sought--the commission could, in its discretion and without hearings or other proceedings, grant a temporary permit for that service by a motor contract carrier by motor vehicle. A temporary permit would have to be granted, at the request of an applicant, in all cases except when a safety or fitness-related protest had been filed, which would have to include specific allegations necessary to state a prima facie case and reasonably inform the commission and the applicant of the nature of the allegations, with specific reference to the section of all related statutes, rules, orders and tariffs. The temporary permit, unless suspended or revoked for good cause, would be valid until the commission had made a decision to grant or deny a permanent permit. The grant of a temporary permit would create no presumption that a corresponding permanent permit would be granted thereafter.

Proceeding deadlines. The act requires that, in any case in which an oral hearing is held, the PSC complete evidentiary proceedings no later than 180 days after the beginning of the proceeding and issue a written proposal for decision within 270 days. The bill would add to this that the commission would have to issue in writing the final decision no later than 300 days following institution of the proceeding. In all other proceedings, the PSC must issue a written proposal for decision within 180 days after the beginning of the proceeding. The bill would change that deadline to 120 days, and the PSC would have to issue in writing a final decision no later than 180 days following institution of the proceeding. (In certain "extraordinary circumstances," the commission may extend these periods, but the total of all extensions cannot exceed 90 days.) These provisions would apply only to proceedings involving motor common carriers.

The bill would establish similar provisions (with slightly different decision deadlines) that would apply specifically to matters that came before it involving motor contract carrier proceedings.

Leasing or contracting for equipment. The act requires that a lease, contract or arrangement under which a certificate holder augments his or her equipment specify the period for which the equipment is to be operated, and that the period be at least 30 days. The bill would also require a lease (etc.) to include a provision that the vehicle had, within the immediately preceding 12 months, passed an inspection pursuant to the Motor Carrier Safety Act's requirements.

Other provisions. The bill would require the PSC to cooperate with other state departments involved with the registration of commercial motor vehicles to implement a system whereby owners or drivers of commercial motor vehicles could obtain registration plates, decals or tabs and pay the required fees at a single designated location, rather than at multiple locations.

HOUSE COMMITTEE ACTION:

The House Transportation Committee adopted Substitute H-1 for the bill that includes language not found in the Senate-passed version of the bill relative to the definition of a motor contract carrier. The added language specifies various commingling services that a motor contract carrier could perform (commingling of authorized contract carrier shipments while providing common carrier service over fixed routes, commingling of authorized packages weighing 70 pounds or less, and transporting commingled coin, currency and food stamps in certain situations).

FISCAL IMPLICATIONS:

The Department of Commerce has said the bill's fiscal impact is difficult to determine and would depend entirely on the overall impact of the bill on the motor carrier industry. A spokesman for the department said the bill could encourage a shift from common carrier authority to more narrow contract carrier authority. If this occurred, the Public Service Commission would need more staff to process applications for motor carrier certificates of authority. (11-5-93)

ARGUMENTS:

For:

The bill would strike a balance between the perceived protectionism of current law and the abuses possible under complete deregulation.

Particularly, by changing the definition of "motor contract carrier" and revising numerous provisions that govern both the process of applying for motor contract authority as well as operating as a contract carrier, the bill should encourage more contract carriage agreements within the state. Motor contract carriers currently ship over 40 percent of all goods moved intrastate in Michigan. The bill also would expand the ability of persons to obtain temporary authority to operate as contract carriers as long as they're deemed fit to operate in a safe manner (both in a physical and financial sense) by the Public Service Commission. Thus, a contract carrier that offered a better rate on a shipment or shipments could begin fulfilling the contracts immediately under a temporary permit (assuming they were deemed fit), while the PSC deliberated over whether the contracts would promote the transportation policy set forth in the act. As introduced, the bill proposed a more comprehensive (some would say radical) deregulation of the trucking industry by reducing the role of the PSC in overseeing motor carriers and their rates and practices. But such drastic changes could result in disruptive bankruptcies, in loss of service to remote, less profitable areas, in monopolistic activities such as temporary rate-cutting to drive smaller competitors out of business, and in Michigan intrastate carriers being forced out by interstate carriers. Deregulation, if it is to take place (and the general trend seems to be in that direction), must be done incrementally to ensure its economic impact is not so severe. The bill in its current form would encourage more competition within the industry without causing the problems that could result from immediate and more extensive deregulation.

For:

The bill would require the Public Service Commission to develop a motor carrier rating system, would require regular vehicle inspections, and would require the driving records of motor carriers and applicants to be reviewed before a person could be authorized to operate as a motor carrier. These provisions would help promote safety within the industry and help to protect the driving public from unsafe situations involving irresponsible or incompetent drivers or poorly maintained or otherwise unsafe motor vehicles used by motor carriers. The bill also would help to protect consumers by providing for binding estimates to be used by motor carriers operating as household movers. Some household movers reportedly have

deceived customers by offering to move their goods for a certain price only to raise the estimate later once the moving process is underway or finished. Under the bill, a mover would be bound to the terms of an estimate and could subsequently charge only up to 10 percent more for any costs not anticipated when the initial estimate was made.

Response:

The House Transportation Committee failed to adopt an amendment to the bill that would make a person who applied for temporary authority as a motor contract carrier subject to more stringent review standards if the person proposed to transport hazardous materials in bulk.

Against:

The bill would not promote a competitive motor carrier industry and, in fact, would erect new barriers to carrier entry into the market to the detriment of the state's business climate and individual consumers. For instance, the bill would prevent the PSC from denying a collective rate agreement proposed by two or more carriers. Under the act currently, the PSC may disapprove a collective rate agreement if it feels the agreement would not serve the public's interests. The PSC, after studying the issue, has determined that collective ratemaking sometimes can serve the best interests of both the public and the industry, and in other cases serves no other purpose than to protect certain carriers. Other provisions would change the standard for entry into the common carriage market from serving a "useful public need" to a "required public necessity." This new standard would lead the commission, and perhaps a court that reviewed a decision, to conclude that the legislature intended to make a stricter standard, one which serves to prevent new competitive entries into the common carrier market. A higher standard would result in artificially higher prices for shippers and, ultimately, for businesses and consumers. Most of the changes in the bill are aimed at encouraging more competition from contract carriers, even though most of the motor carrier market is currently served by common carriers. The bill would make it easier for persons to get temporary authority as a contract carrier but fails to provide the same ease for those who wish to provide service as common carriers.

Against:

The bill fails to expand the current radius exemption that enables someone to operate as a household mover within an eight-mile radius of an urban area without falling under the act's provisions

governing rates. This provision essentially locks smaller moving companies into small areas and prevents them from competing with bigger movers by offering the same or better service at lower prices. The bill should expand the exemption radius to encourage more competition for this service in larger urban areas of the state.

SUGGESTED AMENDMENTS:

The Michigan Teamsters suggests amending the bill to include a provision specifying that when a motor contract carrier seeks a temporary permit application involving the transport in bulk of certain hazardous materials, the provisions governing the granting of a temporary permit for a motor common carrier would apply.

Also, Two Men and A Truck/USA, Inc., suggests amending the bill to specify that qualification for a motor common carrier certificate of authority would depend on whether a carrier would serve a "useful public purpose" rather than a "required public purpose" as the bill currently would require. Two Men and A Truck also requests language that would expand the current eight-mile radius exemption (in which motor carriers are exempt from the act's provisions if they operate only within an eight-mile radius around a city or village) to at least 20 miles.

POSITIONS:

The American Automobile Manufacturers Association supports the bill. (11-5-93)

The Association of Safe and Competitive Transporters supports the bill. (11-5-93)

The National Federation of Independent Business, Michigan Chapter, supports the bill. (11-8-93)

Spartan Stores supports the bill. (11-5-93)

The following indicated they would support the bill if the amendment offered by the Michigan Teamsters were adopted (see SUGGESTED AMENDMENTS):

The Michigan Teamsters (11-8-93)

The Michigan Trucking Association (11-8-93)

Rex Carriers, Inc. (of Detroit) (11-8-93)

Liquid Transport, Inc. (of Spring Lake) (11-5-93)

Two Men and A Truck/USA, Inc., (of Lansing)
would support the bill if its suggested amendments
were adopted (see SUGGESTED
AMENDMENTS). (11-8-93)

Two Men and A Truck of Grand Rapids, Inc.,
would support the bill with its suggested
amendments. (11-8-93)

The Department of Commerce does not support the
current version of the bill. (11-5-93)