

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) ENERGY, TECHNOLOGY AND FEDERAL RELATIONS

Call to Order: Chair Katie Zolnikov-R, on January 23, 2023 at 3:00 PM, in 472

ROLL CALL

Members Present: Rep. Katie Zolnikov, Chair (R)
Rep. Steven Galloway, Vice Chair (R)
Rep. Katie Sullivan, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Larry Brewster (R)
Rep. Paul Fielder (R)
Rep. Paul Green (R)
Rep. Derek Harvey (D)
Rep Joshua Kassmier (R)
Rep. Casey Knudsen (R)
Rep. Kelly Kortum (D)
Rep. Bob Phalen (R)

Members Excused: Rep. Greg Kmetz (R)

Staff Present: Lucinda Blair, Secretary
Trevor Graff, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

HB 191 01/16/2023

HB 278 01/19/2023

Executive Action:

HEARING ON HB 191 – Eliminating class D motor carrier regulation

Opening Statement:

15:02:27 Rep. Brad Barker (R), HD 58, opened the hearing on HB 191, Eliminating class D motor carrier regulation

Proponent Testimony:

15:06:21 Rep. Caleb Hinkle, HD 68

15:07:47 Parker Noland, Self

15:11:09 Jack Brown, Pacific Legal Foundation (PLF)

15:15:33 Roger Koopman, Self

EXHIBIT

15:23:07 Scott Boggio, Self

Opponent Testimony:

15:25:26 EJ Redding, Montana Solid Waste Contractors Association (MTSWCA)

EXHIBIT

15:28:12 Gary Zadick, Self

15:32:44 Lance Johnson, L&L Site Services

15:35:39 Allen Bowker, Bowker Sanitation

EXHIBIT

15:43:46 Lonnie Johnson, Plentywood Sanitation

15:46:09 Chance Sparrow, Tri County Disposal

EXHIBIT

15:49:12 Brandon Sandbak, MacKenzie Disposal

15:51:29 Kelly Reid, Miles City Sanitation (MCS)

15:52:18 Rusty Giulio, Giulio Disposal

15:53:05 Michael Haskins, Rus-Kins Incorporated

16:00:01 Eric Anderson, Teamster Local 2, Local 190

16:01:19 Jennifer Bernosky, Bitterroot and Evergreen Disposal

16:02:41 Jessica Murphy, Bitterroot Disposal/Victor Transfer Station

16:04:13 Chad Bauer, Republic Services

Informational Witness Testimony:

16:08:51 Lucas Hamilton, Public Service Commission (PSC)

Questions from Committee:

16:09:24 Rep. Paul Green
16:09:24 Chad Bauer, Republic Services
16:11:46 Rep. Larry Brewster
16:11:48 Lucas Hamilton, PSC
16:12:43 Rep. Paul Fielder
16:13:51 Rep. Katie Sullivan
16:15:19 Rep. Bob Phalen
16:15:22 Rep. Brad Barker-R
16:17:18 Rep. Derek Harvey
16:17:22 EJ Redding, MTSWCA
16:19:40 Brandon Sandbak, MacKenzie Disposal
16:20:24 Roger Koopman
16:24:42 Chair Katie Zolnikov
16:27:39 Rep. Laurie Bishop
16:31:48 Vice Chair Steven Galloway
16:33:40 Gary Zadick
16:34:21 Jack Brown, PLF
16:37:04 Kelly Reid, MCS

Closing Statement:

16:41:31 Rep. Brad Barker (R), HD 58, closed the hearing on HB 191.

16:44:11 **Recessed**

16:53:44 **Reconvened**

HEARING ON HB 278 – Revise motor carrier rate regulation laws

Opening Statement:

16:55:06 Rep. Brad Barker (R), HD 58, opened the hearing on HB 278, Revise motor carrier rate regulation laws.

Proponent Testimony:

16:57:17 Roger Koopman, Self

Opponent Testimony:

17:01:26 EJ Redding, Montana Solid Waste Contractors Association (MTSWCA)

17:03:24 Lance Johnson, L&L Site Services

17:05:09 Thomas Jodoin, Montana League of Cities and Towns (MTLCT)

EXHIBIT

17:08:11 Chance Sparrow, Tri County Disposal

17:09:49 Brandon Sandbak, MacKenzie Disposal

17:12:30 Chad Bauer, Republic Services

17:14:19 Jennifer Bernosky, Bitterroot and Evergreen Disposal

Informational Witness Testimony:

17:15:02 Lucas Hamilton, Public Service Commission (PSC)

Questions from Committee:

17:15:31 Rep. Paul Fielder

17:15:33 Rep. Brad Barker-R

17:16:15 Chad Bauer, Republic Services

17:18:15 Rep. Derek Harvey

17:18:17 Lucas Hamilton, PSC

17:19:22 Rep. Laurie Bishop

17:21:37 Rep. Bob Phalen

17:22:25 Vice Chair Steven Galloway

17:22:28 Thomas Jodoin, MTLCT

17:23:10 Chair Katie Zolnikov

17:24:58 Lance Johnson, L&L

Closing Statement:

17:30:31 Rep. Brad Barker (R), HD 58, closed the hearing on HB 278.

ADJOURNMENT

Adjournment: 17:33:15

Lucinda Blair, Secretary

Additional Documents: EXHIBIT(230123FEH)

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Energy, Technology and Federal Relations

Date: 01/23/2023

Time: 3:00 PM

Place: Capitol

Room: 472

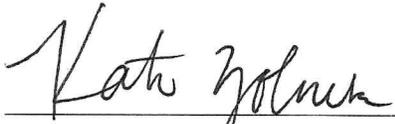
BILLS and RESOLUTIONS HEARD:

HB 191 Eliminating class D motor carrier regulation - Rep. Brad Barker

HB 278 Revise motor carrier rate regulation laws - Rep. Brad Barker

EXECUTIVE ACTION TAKEN:

Comments:



Rep. Katie Zolnikov-R, Chair

House

Roll Call

(H) Energy, Technology and Federal Relations

DATE: 01/23/2023

TIME: 3:00 PM

| <u>NAME</u> | <u>PRESENT</u> | <u>ABSENT/EXCUSED</u> |
|------------------|----------------|-----------------------|
| Bishop, Laurie | X | |
| Brewster, Larry | X | |
| Fielder, Paul | X | |
| Galloway, Steven | X | |
| Green, Paul | X | |
| Harvey, Derek | X | |
| Kasmier, Joshua | X | |
| Kmetz, Greg | | X |
| Knudsen, Casey | X | |
| Kortum, Kelly | X | |
| Phalen, Bob | X | |
| Sullivan, Katie | X | |
| Zolnikov, Katie | X | |



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

FEDERAL RELATIONS, ENERGY & TECHNOLOGY COMMITTEE

DATE 1-23-23

BILL NO: HB 191

SPONSOR(S): Brad Barker

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
 Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

| Name | Representing | Support | Oppose | Informt'l |
|------------------|---------------------------------|---------|--------|-----------|
| CHAD Bauer | Republic Services | | ✓ | |
| Brandon Sandbak | MacKenzie Disposal | | ✓ | |
| Dennis Johnston | MacKenzie Disposal | | ✓ | |
| Lynnie J Johnson | Plentywood Sanitation | | ✓ | |
| Deanna | MT Solid Waste Contractors | | ✓ | |
| Ben Borhoski | Waste Connections | | ✓ | |
| Chris Welker | Waste Connections | | ✓ | |
| Chance Sparrow | Tri County Disposal | | ✓ | |
| Jessica Murphy | Waste Connections | | ✓ | |
| Lance Johnson | LoL Sit Services / Grizzly Asp. | | ✓ | |
| Allen Barker | Barker Sanitation/Collection | | ✓ | |
| Michael Haskins | Rus-Kins Inc. | | ✓ | |
| Mary Haskins | Rus-Kins Inc | | ✓ | |
| Roger Koppman | myself | X | | |
| E. J. Redding | MTSWCA | | X | |
| Eric Anderson | Teamster Local 2, 190 | | X | |
| Jim McGree | McGree Trucking | | X | |
| Lucas Hamilton | MT PSC | | | X |



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

FEDERAL RELATIONS, ENERGY & TECHNOLOGY COMMITTEE

DATE 1-23-23

BILL NO: 278

SPONSOR(S): Brad Barker

SHORT TITLE: _____

Please leave prepared testimony with the clerk.

Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT

PLEASE PRINT

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PLEASE PRINT

| Name | Representing | Support | Oppose | Informt'l |
|-----------------|--------------------------------------|---------|--------|-----------|
| Kelly Reid | Miles City Sanitation | | ✓ | |
| Gary Zedler | Mont Solid Waste Assoc | | ✓ | |
| Chad Bancroft | Republic Services | | ✓ | |
| Lee Meingard | MT Solid Waste Contractors | | ✓ | |
| Brenda Sandberg | Mackenzie Disposal | | ✓ | |
| Dennis Johnston | Mackenzie Disposal | | ✓ | |
| Louise Johnson | Plumwood Sanitation | | ✓ | |
| Jen Bernosian | Waste Connections | | ✓ | |
| Jessica Murphy | Waste Connections | | ✓ | |
| Chris Walker | Waste Connections | | ✓ | |
| Michael Haskins | Rus-Kins LLC | | ✓ | |
| Mary Haskins | Rus-Kins LLC | | ✓ | |
| Lance Johnson | Loc site Services / Grizzly Disposal | | ✓ | |
| Allen Barker | Barker Sanitation / Calibration | | ✓ | |
| E. J. Redding | MTSWC A | | X | |
| Jim McGree | McGree Trucking | | ✓ | |
| Lucas Hamilton | MT PSC | | | X |

TESTIMONY OF ROGER KOOPMAN

HOUSE ENERGY, TECHNOLOGY AND FEDERAL RELATIONS COMMITTEE

January 23, 2023

HB 191

MR. CHAIRMAN. Whether we realize it or not, garbage is an important thing to us. If it wasn't, we wouldn't make so much of it! And all that garbage is generated by us freely acquiring goods in an incredibly competitive free marketplace, where choice is everywhere and the consumer is king.

Can you imagine living in a place where there was no choice among goods or services? One brand of car. One brand of clothing. One doctor. One barber. One builder. One plumber. One garbage collector. Stop right there – because in many if not most Montana communities, there is but one brand of garbage collection to choose from, which means no choice at all. The cost and quality of that service is locked in, and cannot be influenced by competition and consumer choice.

Is there an economic or marketplace reason why these monopolies naturally exist? Definitely not. They exist solely because the state government of Montana wills it so. Were it not for the intervention of government into the solid waste hauling marketplace, consumers would have many more choices that do not now exist – necessarily producing better service across the board at a significantly lower price. And what could possibly be wrong with that?

There is probably no single area of government monopoly creation that is more harmful and less logical than in the Class D garbage collection industry. Under the pretention of “consumer protection,” monopolies and near-monopolies are effectively established in almost every Montana community, by slamming the door to market entry and abrogating Montanans’ fundamental right of private enterprise. It is government protectionism at its worst, inevitably resulting in ***much higher prices and lower quality service*** than would exist in an active, open, competitive marketplace. Every consumer suffers, while a small number of coddled and protected companies reap inordinate profits, by avoiding competition and shedding normal business risk. Some people would call it a racket. I would tend to agree.

Having served as a Public Service Commissioner for eight years, I can speak to this travesty with much personal and professional experience. I have watched one small entrepreneur after another, coming before our Commission hat in hand, seeking “permission” to buy some garbage trucks and receptacles, hire ten or twenty people and begin offering competitive garbage services in a given monopolized community. I have seen the spectacle of these would-be business owners being confronted by a bevy of corporate lawyers protesting their very freedom to exist. I have seen them being forced down a legal and bureaucratic gauntlet of

extended PSC hearings and haggling, and have noticed the troubled and bewildered looks on their faces. I could almost read their minds. It is as if they were saying, "Is this America? What ever happened to the American Dream? My dream?"

It was one of the most pathetic sights you could ever witness. They weren't asking for money. They weren't asking for government breaks or favors. They weren't asking for anything, other than the simple right to exist. To start a business with their own sweat and savings, and to serve a public need. The consumers said yes, but the system said no.

Given the power of the government-franchised opposition that mounts against them, I suspect that most of these budding businesses simply give up before they get started. Nameless, faceless victims who walked away from a dream. People never seen, never known and never part of any statistic. Just another opportunity lost. Another dream that died before it began. Miscarried before it was born. You can't measure that. You can't calculate the human hopes crushed under the foot of government, by roadblocks and interference in an area where the principles of a free society say government should push the default button of liberty – and stay out of the way.

Think about it. Who can afford to spend \$50,000, \$100,000 or more in legal fees, before you can even open your doors, knowing that in most cases you will never be allowed to open them anyway, or will have to endure many more months of legal challenges and appeals by Big Garbage and its corporate lawyers? This is the true and accurate human picture of very bad public law. And who suffers? Everyone.

What are the trade-off public benefits? ***There are none.*** The protected industry, benefitting with its often obscene profit margins, will bring forth a flood of sophisticated-sounding arguments, of course. For example, you will hear them argue that "uncontrolled competition" destabilizes the market and threatens the quality and reliability of service to the public. They will warn that "upstart operators" might be dumping their trash in ditches and on public land. I have heard all of these claims many times before the PSC, and I am here to tell you that they are **unmitigated nonsense**. Common sense alone tells you otherwise, and so does the complete absence of data to prove this assertion. Does competition disrupt the status quo? Of course it does! Is that a bad thing? No, it's a good thing. Companies that face no competition will protest the introduction of competition every time, because it does indeed disrupt their comfortable existence. But competition and economic freedom are the public friend, not the public enemy. After they're finished complaining, they will then set about to do the right thing: ***get better.***

The government-certified garbage haulers will also insist that the public (read: the existing garage monopolies) need protection from unhampered competition that will fail to live up to its promised benefits. They will tell you that the financial investment required to build and maintain a credible, high-quality garbage collection requires the assurance of a "decent guaranteed return" and that "low quality" competition will hold sway if the market is thrown open to unlimited entry. Again, I appeal to the committee's common sense. There is no objective evidence to support their protectionist protestations. I have yet to see one scrap of

evidence that proves their argument. How can there be? They are arguing against the very **role** of competition itself in a healthy, functioning free market economy.

How much, you ask, are Montana trash haulers in monopolized markets over-charging their captive customers? Because the PSC does not regulate their rates, no complete information is available. But as an example, it was revealed during one of the PSC's application dockets that Republic Service's 2014 Montana Annual Report showed an eye-popping statewide average profit of 41 percent. This compared with record testimony showing Oregon's profit margins averaging 8 to 10 percent. Republic even admitted in cross-examination that their minimum net profit target for Gallatin County was 22 percent – more than twice the industry average.

In the Gallatin example, Republic's pricing showed a dramatic change once the Commission approved L&L Site Services as a local competitor. Specifically, it was testified that the Belgrade School District – where Republic had enjoyed no competition – was being charged a greater amount by that company than the much larger Bozeman School District, where Republic had to compete with bids from the City of Bozeman. Then, when L&L showed up to bid on the Belgrade contract, Republic's new bid suddenly came in at half the amount they'd been charging before. So unimpressed were school officials with Republic's cost calisthenics -- and apparent hardball tactics -- that they chose the higher L&L bid anyway.

In making their arguments for perpetual protection, incumbent trash haulers like Republic often provide elaborate excuses for over-charging their captive customers. You will no doubt hear, for example, that introducing competition will interfere with their ability to use their excess revenues from the urban customers to subsidize the rural customers who it costs them more to serve. They claim the new competitor will “cherry pick” the more profitable urban routes, and force the incumbent to charge rural residents more. They will also complain that competition will take away dollars that the existing service was devoting to recycling and local charities.

But wait. By saying this, these companies are admitting that they are greatly **over-charging** the majority of their customers who do not live in remote areas. Should these customers be expected to over-pay, in order to subsidize other customers who are not being charged their true cost of service? Should they feel justly treated by this cost-shifting, and the underwriting of company causes and charities? That's for them to decide. But if a new service chooses to set its rates more fairly and equitably, based on true cost of service in the different zones and areas, that's not cherry picking. It's just fair pricing and good economics. Let consumers decide.

These, of course, are the standard arguments of **every** industry that thinks it has a special “right” (or the political power) to be encircled by a hedge of government protection that keeps the competition out. If we accepted these claims as valid, we would be rejecting the entire idea that the rigors of competition benefits **any** industry, and we would embrace the belief that all industries should be government-designated monopolies! I say this because there is truly **nothing** about garbage hauling in particular that makes them a unique or natural monopoly, and thus, nothing about the nature of that industry that justifies guaranteeing its markets and eliminating its competition.

If you wonder how a “simple” state certification process can create anti-consumer monopolies, consider the kinds of hurdles a new Class D garbage collection applicant faces before being certified. Included in the four-part “test” on which the hopeful businessperson must score **100 percent**, is the requirement to **prove** to the commission that there is a need for their service, **prove** that the existing operator cannot supply that need, and **prove** that their competition will not somehow “harm the existing carrier against the public interest.” These are almost impossible propositions for the applicant/entrepreneur to overcome. Note that these are taken not from Montana state statute or administrative rule, but rather from “common law”, i.e., from language developed and commonly used in **other** states – with the involvement and blessing of the garbage industry. Might there be something wrong with that picture?

Consider, for example, the requirement to prove a “need” for another trash hauling business in a given market area. Need according to who? Economically speaking, the notion that a regulatory agency like the PSC is qualified to establish market need is downright absurd. Who is in a better position to determine market need and opportunity – a government bureau or the entrepreneur who is prepared to invest hundreds of thousands of his or her own money? And exactly how much need is “enough” need to satisfy the PSC? The law is silent on this, or for that matter, on how need can be empirically determined. Should the government be deciding need and demand, or should the consumer himself, voting with his dollars? Moreover, for consumer choice to be allowed, must the government agency first be persuaded that the existing provider is doing a bad job? Of course not.

I’m thinking, for example, of the various competing businesses in my own hometown of Bozeman. Wal-Mart and Target are fine companies who serve the community well. Does that mean Bozeman doesn’t “need” Owenhouse Hardware, where I choose to shop? Lowes and The Home Depot are likewise perfectly fine companies. But does that mean Bozeman doesn’t “need” Kenyon Noble or Simpkins-Hallin, where I chose to do business? Would local consumers have been better or worse off if any of these companies were prohibited from entering the Bozeman market, i.e., if any of them were first required to establish “need” to a government bureau?

Competitive forces produce strong markets, while lack of competition produces weaker markets that ill-serve the consumer. Monopolistic companies are not, by definition, bad providers. They are simply creatures of the market conditions under which they operate. If there is no competition to drive down rates, there is much less incentive to keep rates low. The function of price signals in the marketplace is removed. Likewise, if there is no threat of losing market share to another carrier, there is less reason to vigorously pursue a consumer’s business with new offerings, better deals, etc. etc. Where else can that consumer go?

Removing these absurd requirements could be a step in the right direction, but the real question that needs to be answered is whether there are **any** public benefits and therefore, **any** public policy justification for convenience and necessity certification of new garbage collection companies. The answer to that question is a resounding NO. That is why HB 191 is the most compelling course of action. Because of ongoing lawsuits filed against a PSC in this very area, the Commission itself felt compelled to remain officially neutral on this bill. But during the time

when I was still serving (through 2020, the sentiment on the Commission and among our staff was clear. The PSC was tired of being the gatekeepers of monopoly, and was tired of spending so much of its time with these hopeless and counter-productive dockets. We recognized that current law had produced the absolute **worst** of conditions for Montana citizens, where they are denied freedom of choice and forced to endure monopolies that are government created but not government regulated. Our local markets are literally delivered to these companies on a silver platter, enjoying the luxury of charging pretty much anything they want. The attitude around the PSC was to either (1) free up the industry by repealing certification, or (2) price regulate the industry like every other protected monopoly. HB 191 would get the Commission out of the monopoly birthing business, free up the garbage collection marketplace, and end the frequent, costly and time-consuming lawsuits.

The existing garbage companies and their association, having a strong vested interest in the status quo, can be counted on to wage a vigorous, fear-mongering effort to kill this bill and thus maintain their privileged position. Having served in the House for two terms, I understand that it is always easiest for a committee to stand behind the status quo, rather than ***standing in front of change***. This is especially true when confronted with strong and vocal special interests like the ones you will hear from today.

But I am asking you to stand in front of change, show courageous leadership and enthusiastically support this bill. The consumers of Montana are always underrepresented at hearings like this, for obvious reasons. Who are these consumers? They include not only every homeowner, but most every landlord, manufacturer, service business, retail business, school district, college, university, local government, and just about every other entity that produces solid waste. All of them deserve the best possible service at the lowest achievable cost. They will never see that happen in the absence of industry competition, where monopolies are government-created but not government regulated. Every consumer is helplessly disadvantaged, while Big Garbage has it made in the shade.

The stakes could not be higher. There are few bills coming before you this session that will be more important or affect more people. Please replace senseless monopoly with consumer choice and economic freedom. Every Montanan will thank you.

HB191

Since 1931 transportation of garbage has been regulated by the Montana Public Service Commission. The bill asks that you remove the regulation that has been in place for decades and has benefited Montana citizens for 90 years.

PLEASE VOTE **NO** TO GARBAGE DEREGULATION

BENEFITS OF GARBAGE REGULATION

Assurance of Stable Service. Montana is a unique state with a small population despite our large geographic size. Rural “out-of-the way” customers have the opportunity to receive garbage service within permitted areas. Without regulation, haulers may have no incentive to continue to service expensive out of the way areas. Class D haulers take their obligation to provide service to all customers within their service area very seriously and do not cherry-pick only those customers in the most profitable, populated areas. They have invested substantially and provide service despite inclement weather or adverse conditions. Montana strives to maintain a safe, beautiful and clean environment. It is imperative we maintain a stable, balanced and reliable system of garbage disposal.

Service Standards and Environmental Concerns. Certificated haulers take pride in the quality of their fleet and service standards, that said – there are occasions where there may be a blown debris or hydraulic spill. With a certificated hauler servicing one territory, there is protection for the local community/government because it is known who caused the issue. This also would include early AM collection – where in a deregulated environment, it is unknown to the local community what company might be responsible for noise complaints early in the AM. Lack of regulation may inevitably lead to increased illegal dumping in the most remote areas that are hardest to clean up.

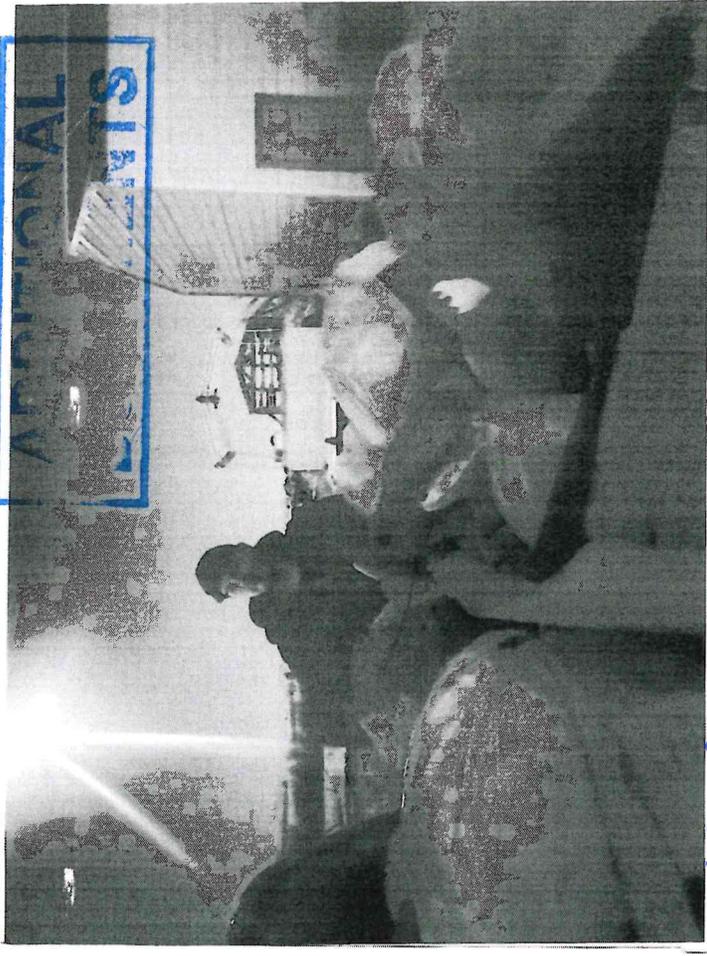
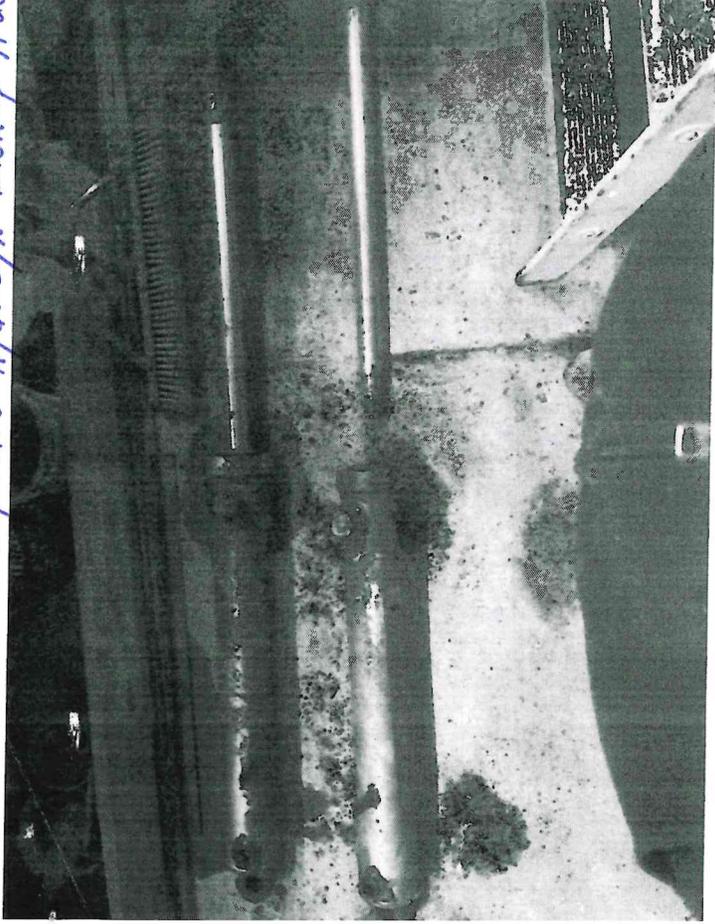
Quality of Life. Having a certificated hauler means that there is one ‘garbage day’ in a neighborhood, rather than the impact of large, noisy garbage trucks going in and out of residential areas multiple times a week.

Road Maintenance. Having a certificated hauler means you limit the number of heavy garbage trucks going back and forth on roads that impacts wear and tear on those roads especially in rural areas.

Safety and Training. Class D carriers are required to carry a minimum of \$500,000 liability insurance. A truck hauling container waste is typically a tandem 40,000 GVW truck. Drivers are trained, tested and required to pass all federal DOT regulations, including drug testing, physical fitness, etc. They receive continuous safety and specialized training such as recognition of suspicious or potential hazardous and toxic wastes that have been discarded into the waste stream and learn what to do with such wastes (examples: infectious and medical wastes, meth and other drug wastes, used batteries, containers of unidentified liquid which may be pesticides, solvents, asbestos, radio-actives wastes (x-rays) and the like)

separated Hyd. Cyl. Deckup Truck

12/23/22

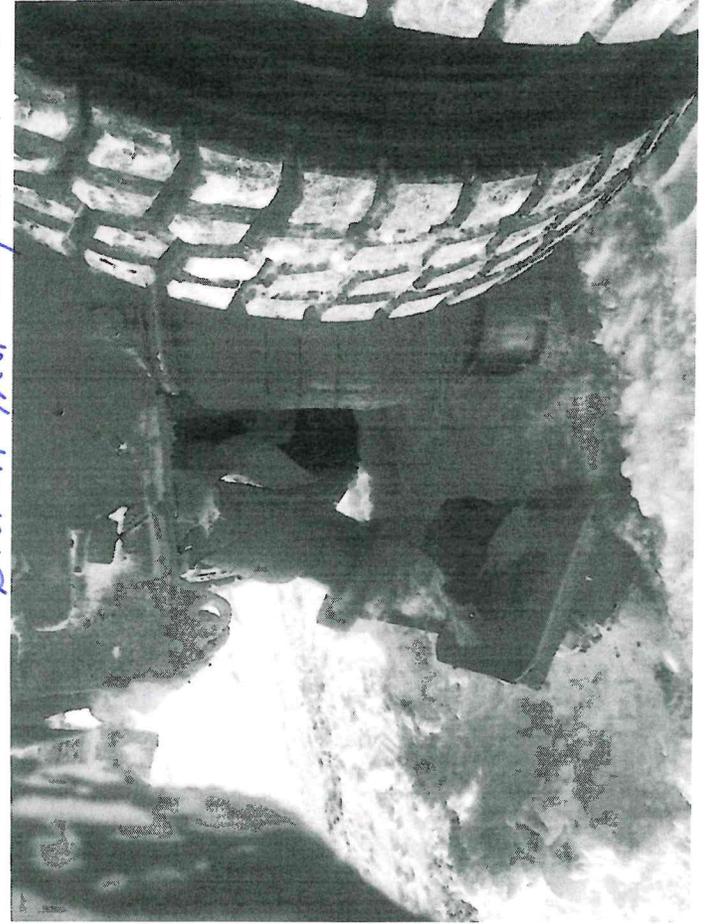


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1/5/23

Picking up Rural Routes with Stock Trailer 1/12/23 ↓

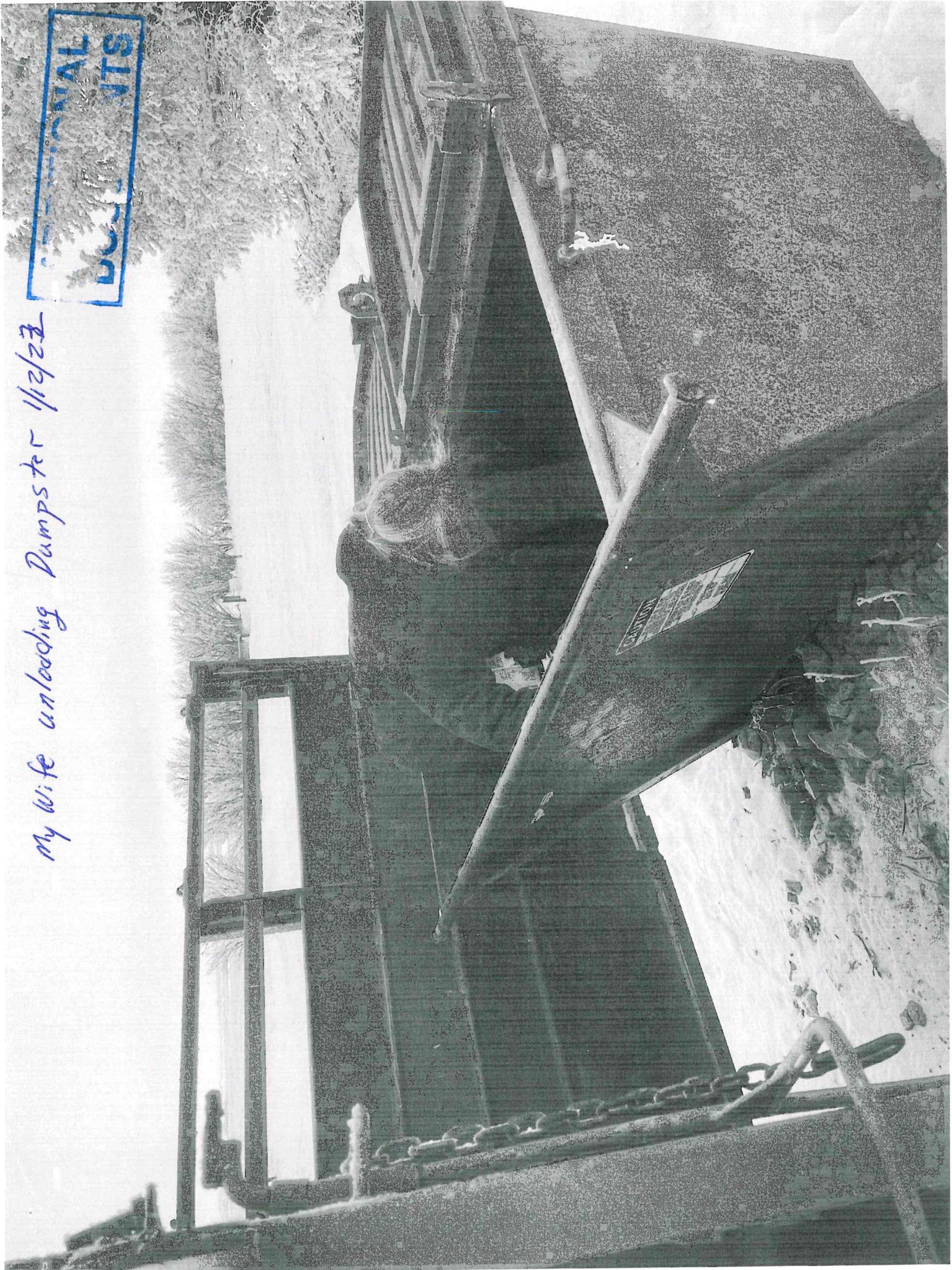
Broken Rear Suspension Main Truck

12/20/22
K -30°



My wife unloading Dumpster 1/12/23

COMMERCIAL
DUMPSTERS



January 23, 2023

Letter from Donna Tenneson, Founder
Tri County Disposal

Subject: HB 191 - Eliminating class D motor carrier regulation



My Name is Donna Tenneson, and I am one of the owners of Tri County Disposal. We are a family-owned business that has been in continuous operation for over 50 years. We are proud of the service we provide. We are proud of our employees. And we are proud of the contributions we make to the Helena area community.

The business was started in 1966. It was called Kenwood Garbage Service which serviced a 2 mile radius west of Helena. I went to the Public Service Commission, which was at that time called the Railroad Commission. I put in for the Helena area and a 35 mile radius and had about 40 customers at the time.

Soon after I started, the City got into law that I couldn't haul residential customers in the City. Also, when I first went into business it was passed through the legislature that any government agency could compete against private enterprise. I lost a few accounts after that.

The Scratch Gravel Landfill was only open to us on Wednesday, Saturday, and Sunday. When we started getting City accounts, I had a contract with Scratch Gravel to bring all garbage to them. When Scratch Gravel closed, I was forced to use the City Landfill. Each year they would raise my rates. One year they raised my rate twice. I could see I was losing ground little by little and we were getting quite a few city customers. I believe we were getting those city customers because of our service, and I was trying to hold our prices down. It was hard to be in competition with the City of Helena because of all the taxes we had to pay that they were exempt from.

Through a good friend I heard about some land that might be suitable for a landfill. I went to the state and talked to a man I knew because he spoke at our conventions, and he later went to work for one of the hauling companies. He could see the City was trying to drive me out. The first thing he advised before I purchased the land was to put in monitoring wells to see where the ground water was. After finding it was landfill suitable, I purchased the land and started through the mountains of paperwork. After 2 years of going through all the paperwork and meetings we opened the landfill in 1988. As far as I'm concerned, it was none too soon as I felt I was really being hit by City rates that I know I couldn't afford much longer.

One thing that really worked for me was the place where I lived and raised my children. I was able to use my house, my trucks, and have my office, all in one place.

Today I ask that you do not support deregulation and allow my business and other businesses like mine to continue to provide service to our community.

Thank you very much for your time.

Young Montana Entrepreneur Is Being Legally Barred from Hauling Trash Because Established Players Don't Want the Competition

If it sounds crazy that established players get a say on who is allowed to compete with them, well, it should.

Friday, December 9, 2022

Image Credit: Ildar Sagdejev - Wikimedia Commons | CC BY-SA 4.0

Patrick Carroll

Economics Certificate of
Need Competition Monopoly Entrepreneurship Montana Pacific Legal Foundation

When Parker Noland launched his trash-hauling business at age 20 in the summer of 2021, he was excited about the opportunities that lay before him. After taking out a loan from a local bank, the Montana native bought a truck and some dumpsters and got to work promoting his services. The business plan was simple: he would deliver dumpsters to construction sites looking to get rid of debris and then transport the dumpsters to the county dump once they were full.

Things quickly got complicated for Noland, however. Though he had registered his business, gotten the proper insurance, and complied with all public health and safety standards, he was still missing one thing, a Certificate of Public Convenience and Necessity. As a result, right when he was about to get his business off the ground he was given a cease and desist order by the Montana Public Service Commission, the agency responsible for administering the Certificate law.

Noland applied for the Certificate shortly thereafter on September 8, 2021, but his troubles were just getting started. Two national garbage companies—his would-be competitors—protested his application, which they are allowed to do under the law. The companies issued various demands, such as data requests, and Noland's legal expenses to fight the protests were soon thousands of dollars and counting.

On November 9, 2021, Noland made the difficult decision to withdraw his Certificate application, seeing as he could not afford the mounting legal expenses involved with fighting the protests. To this day, Noland remains ready and willing to run his trash-hauling business, but he is legally barred from doing so until he gets the Certificate.

On November 15, 2022, Noland teamed up with the Pacific Legal Foundation (PLF) to file an official complaint with Montana's eleventh judicial district court, seeking a permanent injunction against further enforcement of the law on the ground that it violates his Constitutional rights.

A Competitor's Veto

If it sounds crazy that established players in an industry are empowered by the government to bury would-be competitors in unnecessary legal fees, well, it should. As PLF argues, these laws practically amount to a "competitor's veto."

“Montana’s Certificate of Public Convenience and Necessity law allows established garbage companies to keep potential competitors like Noland out of the market,” PLF writes in their complaint. “Noland applied for a Certificate, but was forced to withdraw his application after some of the largest garbage companies in the nation protested his application, which imposed massive delays and created enormous financial costs. The Certificate provisions challenged in this case prevent Noland and other would-be entrepreneurs from working—not because they are unfit to operate—but to protect incumbent garbage companies from having to compete fairly.”

“Incumbents can protest for the bare reason that they do not want to face new competition,” PLF continues. “The Montana Public Service Commission is further empowered to reject an applicant because it believes there is no ‘need’ for a new company, and therefore that a new business would take away from the incumbent’s profits. Together these provisions create a Competitor’s Veto over those who wish to exercise their right to earn a living as a Class D hauler. This blatant economic protectionism is prohibited by the Montana and U.S. Constitutions.”

In sum, “the Competitor’s Veto allows existing garbage companies to force an applicant to undergo the time and expense of an administrative hearing that has nothing to do with the applicant’s public safety record, or any other matter related to public health or safety, but instead simply because

existing garbage companies seek to restrict market competition.”

Noland is hardly the only entrepreneur running into this problem. As PLF notes, there were eight applications for a Class D (trash hauling) Certificate in Montana between January 1, 2018 and September 8, 2021. All eight faced protests. As a result of the protests, four of the applications were withdrawn, one was denied, and two were granted the Certificate only after agreeing to reduce the scope of their business.

The story of the one successful applicant who didn't have to reduce their scope is revealing.

“The only applicant who succeeded in securing a Certificate over a protest, and without reducing the scope of its business, was L&L Site Services, Inc., on December 15, 2020,” PLF notes. “After a lengthy legal fight before the Commission, which involved extensive discovery, including 13 supplemental responses to Allied Waste Services’ data requests, a 5-day evidentiary hearing requiring legal representation, and contentious oral argument, L&L’s application was granted on April 29, 2022, over two dissenting votes from Defendants Brad Johnson and Randy Pinocci.”

The garbage company which protested their application has since filed a Motion for Reconsideration, which remains pending.

“Over the past 3 years,” PLF concludes, “the strongest predictor for getting permission to enter the trade of dumpster servicing was agreeing to reduce one’s operating authority to not compete with incumbents. And even though one applicant was able to afford the time and expense of the legal battle required by an incumbent’s protest, the challenged provisions still allowed the incumbent to inflict significant costs and delay on its potential competitor for purely anti-competitive reasons.”

The Case against Certificate Laws

Laws requiring a Certificate of Public Convenience and Necessity (CPCN) cover a variety of industries in different states—from trash collection to telecommunications to natural gas—but they all have similar impacts. They are closely related to Certificate of Need laws (CON laws) which create similar barriers in the healthcare industry (hospitals, nursing homes, ambulances, etc.) and in other industries such as transportation (specifically moving companies).

The justification for these kinds of laws is twofold. For one, proponents argue that allowing businesses to compete without demonstrating a “need” will lead to duplicative services, that is, an overabundance of supply in a given area. The problem, they contend, is that this will lead to higher prices because companies will charge more for the capacity they *do* use to compensate for the unused capacity. If a company builds a hospital, for example, but realizes it can’t fill half its beds because the market is already saturated with hospitals, it will

ostensibly hike prices for the beds it *does* fill to compensate for its loss.

The other argument is that by restricting entry into “saturated” markets, politicians can use CPCN and CON laws to encourage entrepreneurs to set up shop in areas that tend to have less access to these services, such as rural areas.

These arguments may sound plausible at first glance, but upon closer inspection they are rather spurious. For one, how does a bureaucrat determine when a market is too saturated? There are no objective criteria here. What’s more, the very fact that an entrepreneur is planning to enter a market is evidence that, at least from their perspective, there are needs that are currently not being met by established players.

Another major problem with this analysis is the assumption that businesses can unilaterally raise prices in order to cover their costs. This is *not* how prices work. Prices are set by supply and demand. If anything, a greater supply in a region will lead to *lower* prices.

The idea that these laws are needed to push entrepreneurs to “lower access” regions is also dubious. An entrepreneur, almost by definition, is seeking to meet needs that *haven't already been satisfied*. Thus, they naturally gravitate to precisely these “low access” regions. If they successfully set up shop in a supposedly “saturated” market, it is evidence that the market wasn’t, in fact, saturated. If their business in that region fails, on

the other hand, the market will quickly usher them elsewhere all on its own.

Noland's story is a case in point on this. As PLF notes, construction companies specifically sought out Noland because the large incumbent companies weren't picking up bins in a timely manner. In other words, there was a market need that was clearly going unfulfilled. The market was *not* saturated, and that's precisely *why* Noland was setting up shop in the first place. Further, Noland's more compact truck "allowed him to offer services to areas where the incumbent companies did not," something he was no doubt planning to take advantage of.

There's a curious irony here. Though the Certificate law was intended to increase services in underserved areas, its practical impact is to *restrict* services in evidently underserved areas.

There's an irony on the price front too. Though the law was intended to keep prices down, by restricting entry it is actually creating opportunities for incumbents to keep prices up!

Thus, on both issues, these laws are not only unnecessary, but *counterproductive*. They are hurting the very consumers they were supposed to protect, not to mention the would-be competitors like Noland who are effectively prohibited from entering the market.

The economist Murray Rothbard summarizes the effect of these policies well in his book *Power & Market*.

“Certificates of convenience and necessity are required of firms in industries—such as railroads, airlines, etc.—regulated by governmental commissions. These act as licenses but are generally far more difficult to obtain. This system excludes would-be entrants from a field, granting a monopolistic privilege to the firms remaining; furthermore, it subjects them to the detailed orders of the commission. Since these orders countermand those of the free market, they invariably result in imposed inefficiency and injury to the consumers.”

While the Certificate law in Noland’s story is certainly troubling, the deeper problem this story highlights is the belief that government restrictions of the market can help consumers. The reality is exactly the opposite. The best way for the government to help consumers is to get out of the way, and in particular, to stop enforcing regulations that protect established players from new entrants. Let entrepreneurs compete. Let consumers have choices.

America was built by the Parker Nolands of the world, young entrepreneurs full of dreams and ambitions.

It would be a shame if we strangled that spirit with red tape.

This article was adapted from an issue of the FEE Daily email newsletter. [Click here to sign up and get free-market news and analysis like this in your inbox every weekday.](#)

Blair, LuCinda

From: Graff, Trevor
Sent: Friday, January 27, 2023 1:56 PM
To: Blair, LuCinda; Zolnikov, Katie
Subject: FW: Class D Application Data

For the record, attached is the PSC's information regarding Class D applications.

TG

Trevor Graff
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From: Hamilton, Lucas <Lucas.Hamilton@mt.gov>
Sent: Friday, January 27, 2023 1:53 PM
To: Graff, Trevor <Trevor.Graff@mt.gov>
Cc: Brown, James <James.Brown@mt.gov>; Tschida, Brad <Brad.Tschida@mt.gov>
Subject: Class D Application Data

Trevor,

1-23-23

In the hearing on HB 191 earlier this week, the House Energy, Technology and Federal Relations Committee asked for data about the results of Class D applications filed with the Commission over the last five years.

I have searched our database for Class D PCN dockets since 2018. Based on the results of that search, the Commission has received 16 Class D applications, as shown below:

Class D Applications Since 2018

| | Count | % |
|-------------------------|-------|--------|
| Applications Filed: | 16 | |
| Applications Pending: | 4 | 25.00% |
| Applications Protested: | 14 | 87.50% |
| Applications Withdrawn: | 6 | 37.50% |
| Applications Denied: | 2 | 12.50% |
| Applications Granted: | 4 | 25.00% |

In the table above, "Applications Pending" indicates that the Commission is currently processing the application, which may involve a contested case hearing if the application is protested.

If there are any follow-up questions based on the above information, please let me know.

Thanks,

Lucas

Lucas Hamilton
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Montana Public Service Commission
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Butte Services, Inc.
4815 MT 200
Thompson Falls MT
PSC #1995 (1959)
HB 191/278 January 23, 2023 3pm Rm 472

Owners: Robert & Janice Butte (since 1983)
Residential & Commercial services
Employees: 1 full time, 5 part time including Janice Butte
Vacation and sick pay/ all state and federal withholding taxes/ work comp./ MT Unemployment
No formal program for drug and hazardous identification. OTJ for questionable items. i.e. hazardous, medical waste. Wet cell batteries are common.

I do not view competition as an unhealthy idea. I realize it could be a mechanism for inspiring or enhancing creativity in our ventures to be effective at what we do.

At the same time I believe this (HB191) could be very detrimental to those businesses that have invested heavily in equipment and a reliable workforce to complete the task they are required to do on a daily basis without interruption.

As business owners in a small mostly rural area where stops are sometimes miles apart I feel it could be especially devastating having other concerns operating in the same areas. We are by no means the only choice for disposing of refuse here or many other places in Montana for that matter. Anyone can dispose of their trash at one of the local public sites usually within 10 miles of their residence and the majority of them do.

We serve around 500 customers of which somewhat over 400 are residential and the remainder commercial. One day is required to manage the bulk of municipal residential customers. Since over 1/3 of our residential customers reside in outlying areas on numerous roads, they are spread out over 3 days along with some commercial customers, requiring 2 trucks on one of those days.

One particular stop requires driving 7 miles one way for a single customer.

We provide containers and service for two local non-profits at no cost.

We have numerous elderly and disabled that get special attention. Our employees are very attentive to many of our customers needs.

We get many praises and thank you's and quite a few gifts of cash and or food especially during the holidays. One customer has been giving the crew home baked cookies and brownies for a couple years.

I do not believe we could provide the same quality of service if others were vying for this small market so, we are opposed to H.B.191.

Robert Butte, President

House Energy, Technology and Fed

| Bill | Name | Position |
|-------------|---------------|-----------------|
| HB-191 | Bill Bullocik | Opponent |