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Advancing Competitive Policy in the Legislative Arena: Florida's Experience in Sunset Review of Surface Transportation Regulation

Charles R. Ranson

George H. Sheldon

ADVANCING COMPETITION POLICY IN THE LEGISLATIVE ARENA – FLORIDA'S EXPERIENCE IN SUNSET REVIEW OF SURFACE TRANSPORATION REGULATION

CHARLES R. RANSON*
GEORGE H. SHELDON**

> There must be power in the states . . . to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs . . . .
>
> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. . . . If we would guide by the light of reason, we must let our minds be bold.[1]

INTRODUCTION

On July 1, 1980 economic regulation of surface transportation in Florida was dismantled by the operation of the Regulatory Reform Act.[2] After nearly fifty-one years of expansive governmental regulation, delivery and consumption of intrastate transportation services were returned to a competitive market environment, subject only to reestablished safety regulation[3] and federal and state antitrust and trade regulation.[4] In allowing economic regulation of surface transportation to expire, Florida became the first state to take such action.[5]

The legislative history of this unprecedented decision is the subject of this article, which reflects the authors' vantage point by focusing on the deliberations of the House Committee on Regulatory Reform.[6] First, the operation of the Regulatory Reform Act, commonly referred to as sunset review, will be explained. Then, the various issues that arose in first considering deregulation of surface transportation are identified. Finally, the substance and consequence of

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*B.A., Florida Presbyterian College (now Eckerd College), 1969; J.D., Florida State University, 1973; member, Florida Bar and D.C. Bar.

**B.A., Florida State University, 1969; J.D., Florida State University, 1978; member Florida Bar.

1. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1936) (Brandeis, J., dissenting).

2. FLA. STAT. §11.61 (1979) (originally enacted in 1976, 1976 Fla. Laws, ch. 76-167, and amended by 1977 Fla. Laws, ch. 77-45).

3. 1980 Fla. Laws, ch. 80-298 (reestablished safety regulation under the Florida Department of Transportation).

4. FLA. STAT. §§501.201-.213, 540.01-.11, 542.01-.36 (1979).

5. Prior to Florida's action only New Jersey and Delaware did not pervasively regulate surface transportation.

6. The authors were Chairman and Director of the House Committee on Regulatory Reform.

the legislative debate on these issues are described, both with respect to passenger transportation and trucking.

SUNSET LAW — THE VEHICLE OF CHANGE

Early populism found expression in the adoption of antitrust laws, first at the state level,[7] then at the federal level.[8] Antitrust laws were designed to limit concentrations of economic power that could be used abusively to disrupt operation of free and competitive markets. A century later, a wave of resurgent populism resulted in the states reasserting their long-abrogated antitrust enforcement responsibility.

This new surge of populism also prompted the adoption of sunset laws, which focus on combating entrenched economic power existing by virtue of government regulation. Clearly evident in the fashioning of this new tool for encouraging a competitive marketplace was the recognition that government regulation may ultimately confound rather than promote the purpose for which it was established.

Passage of Florida's sunset law, the Regulatory Reform Act, occurred in 1976.[9] The enactment of Florida's sunset law was predated only by the Colorado legislature's passage of a similar statute. By early 1980, however, a total of thirty-four states had adopted the sunset concept.[10] Of these states, all but two adopted the "true" sunset approach,[11] which requires affirmative legislative

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7. At least thirteen states or territories had enacted antitrust laws prior to passage of the Sherman Act in 1890. *See* H. THORELLI, THE FEDERAL ANTITRUST POLICY: ORIGIN OF AN AMERICAN TRADITION 155 (1955); Rubin, *Rethinking State Antitrust Enforcement*, 26 U. FLA. L. REV. 653, 657-61 (1974).

8. *See, e.g.*, Sherman Act, ch. 647, §§1-6, 8, 26 Stat. 209-10 (1890) (current version at 15 U.S.C. §1 (1976)); Federal Trade Commission Act, ch. 311, §5, 38 Stat. ch. 719 (current version at 15 U.S.C. §§41-77 (1976); Clayton Act, ch. 323, §7, 38 Stat. 730 (1914) (current version at 15 U.S.C. §§12-27, 29 U.S.C. §§52-53 (1976)).

9. 1976 Fla. Laws, ch. 76-167 (codified at FLA. STAT. §11.61 (1979)).

10. *See, e.g.*, ALA. CODE §§41-20-1 to -16 (Supp. 1980); ALASKA STAT. §§44.66.010-.060 (1980); ARIZ. REV. STAT. ANN. §§41-2351 to 41-2354, 41-2361 to -2379 (1980); ARK. STAT. ANN. §§5-1201 to -1212 (Supp. 1979); COLO. REV. STAT. §24-34-104 (Supp. 1980); CONN. GEN. STAT. §§2C-1 to -12 (Supp. 1980); DEL. CODE ANN. tit. 29, §10202 (Supp. 1980); FLA. STAT. §11.61 (1979); GA. CODE §§84-1016 to -1106 (1979); HAWAII REV. STAT. §§26H-1 to -7 (Supp. 1977); ILL. ANN. STAT. ch. 127, §§1951-1957 (Smith-Hurd Supp. 1980); IND. CODE ANN. §§4-26-3-10 to -30 (Burns Supp. 1980); KAN. STAT. ANN. §§74-7201 to -7242 (1979); LA. REV. STAT. ANN. §§49:190-199 (West Supp. 1981); ME. REV. STAT. ANN. tit. 3, §§501-511 (1979); MD. ANN. CODE art. 41, §§484-489 (Supp. 1980); MISS. CODE ANN. §§5-9-1 to -35 (Supp. 1980); MONT. REV. CODES ANN. §82-4601 to -4609 (Supp. 1977); NEB. REV. STAT. §§81-192 to -1,105 (1978); NEV. REV. STAT. tit. 18, §§1-7 (1979); N.H. REV. STAT. ANN. §17(g) (Supp. 1977); N.M. STAT. ANN. §§12-9-1 to -10 (1978); N.C. GEN. STAT. §§143-34.10 to -34.21 (Supp. 1979); OKLA. STAT. ANN. tit. 74, §§3901-3919 (West Supp. 1980); OR. REV. STAT. §§182.605-.635 (1977); R.I. GEN. LAWS §§22-14-1 to -14 (1979); S.D. CODIFIED LAWS ANN. §§1-26B-1 to -12 (1980); TENN. CODE ANN. §§4-2903 to -2924 (Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 5429K (Vernon Supp. 1980); UTAH CODE ANN. §§63-55-2, -7 (Supp. 1979); VT. STAT. ANN. tit. 26, §§3101-3105 (1978); VA. CODE tit. 30, §§64-73 (1978); WASH. REV. CODE ANN. §§43-131.010-.900 (Supp. 1981); W. VA. CODE §§4-10-1 to -14 (Supp. 1980); WYO. STAT. §§28-10-101 to -103 (Supp. 1980).

11. The "quasi-sunset laws" of Alabama (ALA. CODE tit. 41, §20(1)-(16) (1980)) and Vir-

action to continue regulation beyond a certain date. In their varying forms, these sunset laws provide for systematic assessment of government regulatory mechanisms to determine the degree to which such regulation serves the public, as opposed to the private, interest.

An additional impetus to enactment of sunset laws was the substantial decline of confidence in the effectiveness of government. Louis Harris, the noted pollster, described this phenomenon as a "full-blown crisis of confidence."[12] Seventy-six percent of the American public believed the "elected officials have lost control over bureaucrats who really run things."[13] The public felt that bureaucratic agencies and, ultimately, elected officials were non-responsive and non-accountable.

Commentators have described the evolution of administrative bureaucracy as encompassing three distinct stages.[14] This life cycle, which rapidly progresses from early to later states, includes:

(1) the *young years*, characterized by vigorous regulation for the public's protection (regulation by regulators);
(2) *maturity*, where unbiased public protection wanes under increasing influence on the regulators by the regulated (regulation jointly by the regulators and the regulated); and
(3) *old age*, where influence by the regulated over the regulators develops into control (regulation by the regulated).[15]

This capture theory of regulation represents a recent and widely articulated philosophy.[16] Writers do not attribute this transformation to a corrupt motive, but rather to the excessive interaction between the regulated and the regulators that is spurred by revolving-door interchange of personnel between the regulatory agency and regulated industry.[17] The ultimate result of this interaction blurs the distinction between public and private interests. Where the distinction becomes blurred, regulation often protects the interests of the regulated industry by limiting competition, allocating markets, and maintaining pricing and profitability within an industry.[18] Implementation of sunset laws, and the analysis attendant thereto, provides a means to gauge the extent to which regulatory functions and agencies have succumbed to control of the regulated.

Florida's Regulatory Reform Act provided guidelines to conduct this review and criteria to be satisfied as a prerequisite to reestablishment or reform of

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ginia (VA. CODE tit. 30 §§64-73 (1978)) provide for mandatory review but do not include automatic termination.

12. *Hearing on a Survey of Public Attitudes Before the Subcommittee on Government Operations*, 93rd Congress, 1st Session 7 (1973) (statement of Louis Harris).

13. *Id.*

14. *See* Price, *Sunset Legislation in the United States*, 30 BAYLOR L. REV. 401 (1978).

15. *Id.* at 402 n.4.

16. *Id.*

17. *See* J. BURNS, J. PELATSON, & T. CRONIN, GOVERNMENT BY THE PEOPLE 480 (9th ed. 1975).

18. *See* Price, *supra* note 14, at 409 n.48 (in 1973, of 2149 applicants sitting for the licensing examination of the Florida Construction Industry Licensing Board, none passed).

scheduled regulatory programs.[19] Although these guidelines or criteria cannot bind a subsequent legislature,[20] they illuminate the intent of the enacting legislature and have provided significant assistance to ensuing legislatures and legislative committees engaged in sunset review.

On the House of Representatives side of the Florida legislature, the Committee on Regulatory Reform was established to conduct an initial review of most regulatory schemes scheduled for Regulatory Reform Act scrutiny, and to submit recommendations for action to the full House. The committee adopted guidelines for regulatory reform. These guidelines governed the committee's consideration and provided a complete understanding of the burden of proof necessary to reenact regulation. The ten statements comprising the committee's guidelines indicated a clear preference for the minimal governmental interference with free markets that is consistent with the state's police power responsibility. The guidelines were based on a recognition that government cannot protect all people from all things, and stated that:

I. A free market, where consumers make rational and informed choices about the purchase of goods and services, is the most efficient form of regulation.

II. Government should regulate free markets only when it is demonstrated that:

1. The nature of the good or service to be purchased renders it difficult for the consumer to make an informed choice, and

2. The consequences of a wrong choice endanger the consumer's health or safety.

III. When it is demonstrated that regulation is necessary, the least restrictive alternative should be explored first.

IV. Where requirements for entry into an occupation are necessary, those requirements should be clearly related to safe and effective practices.

V. Every out-of-state or immigrant licensee or applicant should have fair and reasonable access to the licensing process.

VI. Where entry into an occupation is restricted through licensing, renewal of a license should be based on evidence of continued practitioner competency.

VII. Decisions concerning initial licensure, discipline, and license renewal should be made fairly and expeditiously with due process protections guaranteed to both applicants and licensees.

VIII. The purpose of regulation is to protect the public, rather than the economic interest of the regulated group.

IX. The public should be involved in the regulatory process. Representa-

19. In enacting the Regulatory Reform Act, 1976 Fla. Laws, ch. 76-168, the Florida Legislature adopted the following criteria to guide evolution of existing programs: (1) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare? (2) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare? (3) Is there another less restrictive method of regulation available which could adequately protect the public? (4) Does the regulation have the affect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree? (5) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?*Id.* §5.

20. *See* Straughn v. Camp, 293 So. 2d 689 (Fla. 1974); Gonzales v. Sullivan, 16 Fla. 791 (1878).

tives of the public are capable, after hearing testimony, of deciding highly technical questions related to regulated practice.

X. Governmental regulation should continue only as long as the need for such regulation continues to exist. The legislature should periodically review the regulation to ensure the conditions necessitating the regulation still apply.

This statement of principles represented a recognition by the Committee on Regulatory Reform that consumers were competent to make and live with the consequences of many more marketplace decisions than government had been previously willing to countenance. This new confidence in the ability of the taxpayer-consumer portends the foundation for renewed public confidence in the ability of government to be accountable and responsive.

INITIAL LEGISLATIVE ACTION: DEFINING THE ISSUES

Legislative interest in surface transportation regulation initially appeared several years prior to its scheduled review within the context of the Regulatory Reform Act. As early as 1977, various members of the legislature attempted to deal with the issue of trucking deregulation.[21] Although considerable support for deregulation was demonstrated, further discussion was postponed until the next session. However, in 1978, several deregulation bills which were introduced died in the House Transportation Committee.[22]

In 1979, the focus of the trucking deregulation effort shifted to the context of sunset review. Coincidentally, a major redirection in the implementation of the Regulatory Reform Act occurred, as legislative attention moved from professional and occupational regulation to, primarily, economic regulation. Prior review was directed to examining regulation of rather isolated, clearly-identifiable disciplines,[23] which did not necessarily have pervasive impact on all seg-

21. In the waning days of the 1977 regular legislative session Representative Alan Becker attempted to amend Senate Bill 1012. Representative Fred Jones, chairman of the Transportation Committee, commented on the floor that the amendment was the first step toward total deregulation of the trucking industry in Florida. Representative Jones' comment brought a cheer from the members of the house chamber and the amendment survived an attempt to lay it on the table. Representative Jones then asked that the bill be temporarily passed. An informal conference then took place between Speaker Donald Tucker, Speaker designate Hyatt Brown, Representatives Jones, Sheldon and Becker as to the future of Senate Bill 1012. During that informal conference an agreement was worked out that Speaker Tucker and Representative Jones would commit the issue of regulatory reform of the ground transportation industry to a review in the 1978 legislative session. The amendment by Representative Becker was then withdrawn and Senate Bill 1012 went on to the senate. This agreement was brought to the attention of the floor and a commitment was made by Representative Jones to study the possibility of deregulation in 1978.

22. Bills sponsored by Representatives Becker and Neal died in the Transportation Committee. Representative Jones did hold one legislative hearing lasting one day. During that hearing presentations were made by Milton Kafoglis, Jack Pierce and Representative Sheldon that deregulation carried merit and should be considered in more depth than a one day hearing. Following their testimony, the trucking industry presented witness after witness arguing that any disruption of the current regulatory scheme would bring about chaos and reduction of services to small communities.

23. In 1978, the first year in which sunset review was undertaken, the legislature reviewed 12 professional and occupational regulatory statutes, terminating four and substantially modi-

ments of the population. The upcoming 1980 session of the legislature was scheduled to conduct sunset review of economic regulation of electric utilities, the telephone industry, water and sewer companies and surface transportation, regulatory functions that had impact upon every Floridian.

The intrastate trucking industry had been regulated by the Public Service Commission (PSC) pursuant to Florida Statutes chapter 323, which contained the bulk of motor carrier regulation, and chapter 350, which empowered the PSC to oversee regulation of the industry. The Committee on Regulatory Reform was assigned to conduct initial sunset review for the House of Representatives.[24]

In the minds of members of the committee were the words of Dr. Alfred E. Kahn, spoken in his August 15, 1979 address before the American Bar Association. Kahn talked of the role of regulatory reform in an anti-inflation program and addressed the broad subject of the diffuse economic impact of pervasive regulation. Speaking generally to the proposition that such regulation exerts upward pressure on prices, Dr. Kahn stated:

> The contribution of each one of these price-inflating policies to the overall inflationary result will always seem small, hardly worth fighting over; the people who are injured will ordinarily be widely dispersed, ill-organized and ill-informed, and the stake of each in each policy and action will be small. In contrast, the beneficiaries will typically be few and well organized, and the stake of each will be large.
>
> That unequal confrontation, repeated on thousands of small, not-very-public issues is the essence of the ways in which government regulatory interventions contribute to inflation. Entering into these individual confrontations, and tipping the balance on the side of the public interest is the essential way of rooting it out.

The third year of implementation of the Regulatory Reform Act was, therefore, perceived as a pivotal year in gauging the viability of sunset review in Florida as a means of stemming the inflationary tide, increasing governmental accountability and forestalling introduction of more radical alternatives to controlling the size and expense of government.

While the subject of review changed in 1980, the format remained essentially

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fying eight. In 1979, three statutes were terminated and 23 were modified. *See* 1977 Fla. Laws, ch. 77-457 (complete listing of review schedule). For analysis of legislative disposition, see the final committee reports of the House of Representatives Committees on Governmental Operations (1978) and Regulatory Reform (1979).

24. Twenty-four regulatory programs were scheduled for review by the 1980 Legislature. Based on the complexity of issues subject to sunset in 1980, Speaker J. Hyatt Brown chose to refer to the House Committee on Commerce all issues related to banking and financial transactions. All other statutes scheduled for sunset review were referred to the Committee on Regulatory Reform. Included in this list were: Chapter 320 (Motor Vehicle and Mobile Home Dealers and Manufacturers), Chapter 323 (Motor Carriers), Chapter 364, Part II (Radio Common Carriers), Chapter 366 (Electric and Gas Utilities), Chapter 350 (Organization and Powers of the Public Service Commission and Railroads), Chapter 367 (Water and Sewer), Chapter 449 (Private Employment Agencies), Chapter 364 (Telephone and Telegraph), Chapter 365 (Private Wire Services), Chapter 493 (Private Investigative Agencies) and Chapter 559, Part IV (Cemetary Regulation).

unchanged. In the area of surface transportation regulation, as with all other fourteen regulatory programs[25] reviewed by the Committee on Regulatory Reform in 1980, the initial task was to obtain a clear understanding of the underlying issues to the debate and of the provisions of existing law. Additionally, the committee examined the manner in which the PSC interpreted and applied that law.

By definition, surface transportation included both passenger bus service (and attendant under-body cargo movement) and trucking services. It is important to note, however, that not all intrastate motor carriers in Florida were regulated by the state. Rather, the extent and form of regulation applied depended on a carrier's classification as one of four types of intrastate motor carriers: common, contract, permit or exempt. Common carriers transported passengers or freight for the general public and were subject to extensive entry, rate, and safety regulation by the PSC. Contract carriers, as the name implies, only served specified customers pursuant to contracts between the carrier and his customers. Such contracts had to be approved by the PSC and could be modified or rejected. Permit carriers included carrier work exclusively under contract for the federal government, carriers transporting unprocessed agricultural commodities, carriers moving houses and buildings, and carriers providing transportation services incidental to a primary business of maintenance, repair, or installation of the transported goods. Permit carriers received operating authority as a matter of right upon application and payment of a $100 fee, although the PSC did examine the proposed operation to ensure its classification within the permit class.

Exempt carriers were not regulated by the state except for safety, registration and insurance requirements generally applicable to all motor vehicles. The largest part of this unregulated sector was composed of private carriers. These are carriers that transport their own goods in their own trucks. Another sizable portion of the unregulated trucking industry was composed of carriers hauling only exempt items. Particular commodities, for example unprocessed agricultural produce, could be hauled at any rate without interference from the PSC.

In fact, over four-fifths of the trucking in Florida was not under certificate from the PSC. The PSC estimated that fifty percent of the trucks on Florida's highways were exempt from their regulation, thirty percent were under the jurisdiction of the Interstate Commerce Commission, and only the remaining twenty percent were subject to state regulation as a common, contract or permit carrier.

Based upon analysis of the extant regulatory framework,[26] the staff of the Committee on Regulatory Reform devised a detailed and comprehensive questionnaire designed to elicit operational and enforcement data from the PSC. Additionally, during the summer of 1979, a report was commissioned by the committee and prepared by the Florida State University Department of Public Administration entitled "Florida's Regulation of Surface Transportation: A

25. See note 24 *supra*.

26. *See* FLA. STAT. §§323.01-.68; 8 FLA. ADMIN. CODE 25-5.01 to .309.

Study of Issues." By design, the department's report to the committee contained no recommendations or conclusions. Every effort was made to avoid language and data which made inferences beyond being descriptive and informative.[27]

While committee staff organized data and conducted research in preparation for the committee hearings, the PSC, with the concurrence of the legislative leadership, undertook a summer-long series of public hearings throughout the state. The purpose for these hearings was to elicit public and regulated-interest comment concerning the various areas within their regulatory authority subject to upcoming review.[28] This agency action in preparation for participation in the legislative process markedly simplified the task of the Committee on Regulatory Reform, since it enabled the PSC to be responsive to committee inquiries. Subsequently, the PSC prepared draft legislation for the reform of surface transportation regulation.

This proposal of the PSC, released in mid-November 1979, soon became popularly known as the "re-regulation proposal." While the PSC suggested areas of reform and the easing of various restrictions, its proposition was predicated on the assumption that continued regulation would inevitably follow legislative review. It is doubtful that the PSC seriously considered the essential question: was regulation necessary? This approach distinctly contrasted the "zero-based" regulatory philosophy of the committee.[29] The "zero-based" approach to regulation, formalized by established guidelines and criteria, enabled the committee to question whether the public welfare required any regulation of surface transportation.

While the PSC conducted hearings and formulated proposals relative to surface transportation regulation, various members of the Committee on Regulatory Reform and its staff met in Washington with representatives and officials of federal agencies involved in the regulation of interstate surface transportation. In recognition of the complexity of economic issues subsumed within the debate and most committee members' lack of academic economic background, this series of meetings was scheduled to acquaint members with the framework of analysis that had evolved at the federal level for measuring the adequacy of

27. *See* Letter from Project Director to Committee on Regulatory Reform Chairman Sheldon (July 24, 1979) (accompanying study).

28. Hearings conducted by the Public Service Commission during 1979 in preparation for sunset review of its regulatory functions included:

July 3 — Written comments due from all affected parties.
July 17 — Tallahassee — Public Hearing on Electric and Gas Regulation.
July 18 — Tallahassee — Public Hearing on Telephone, Telegraph, and RCC Regulation.
July 19 — Tallahassee — Public Hearing on Water and Sewer Regulation.
July 20 — Tallahassee — Public Hearing on Transportation Brokers and Freightforward Regulation.
July 24 — St. Petersburg — Public Hearing on Statutory Revisions.
July 25 — Tampa — Public Hearings on Statutory Revisions.
July 26 — Tampa — Public Hearing on Statutory Revisions.
July 27 — Orlando — Public Hearing on Statutory Revisions.
August 1 — Jacksonville — Public Hearing on Statutory Revisions.
August 2 — Miami — Public Hearing on Statutory Revisions.
August 3 — Pensacola — Public Hearing on Statutory Revisions.

29. COMMITTEE ON REGULATORY REFORM, FINAL REPORT 4 (1980).

transportation regulation. Additionally, meetings with members of the Interstate Commerce Commission and staffs of the Department of Transportation, Department of Agriculture and Senate Judiciary Committee served to illuminate for participants the issues and arguments.

Because federal consideration of regulatory reform had been progressing for some time[30] previous to regulatory reform review in Florida, the series of Washington conferences provided the committee access to considerable data generated by the federal agencies. This information provided a valuable foundation for the sunset inquiry. A substantial number of questions posed by the committee's questionnaire to the PSC resulted directly from information generated during the Washington meetings.

As a result of the Washington discussions and research conducted up to that time, essential issues tentatively defined for consideration in the review of surface transportation were:

1. *entry* — including the rationale for requiring certificates of public convenience and necessity and for imposing the burden of proof on the applicant;[31]
2. *rates* — including the legality of intrastate rate bureaus and the PSC procedures in the review and approval of rate submissions;
3. *restrictions* — including energy and other economic considerations;[32]
4. *safety*; and
5. *the common carrier obligation and small town service* — focusing particularly on enforcement of the common carrier obligation and the extent to which small town service depended upon a regulated transportation system.

Based on the tentative definition of issues, the House Committee on Regulatory Reform began formulating a schedule of hearings designed to provide a foundation for analyzing whether to continue reform or repeal regulation of surface transportation. It was evident that prior to consideration of particular

30. Reform proposals pending before Congress included S. 1400 (Trucking Competition and Safety Act of 1979), S. 2245 (Motor Carrier Reform Act of 1980), and H.R. 6418 (Motor Carrier Act of 1980).

31. To qualify for issuance of a certificate of public convenience and necessity, the burden was on the applicant to demonstrate: (1) that there was a need for the service; (2) that the applicant was fit, willing, and able to provide that service; (3) that the applicant would not harm already existing carriers; and (4) that existing carriers had failed or were unable to supply the proposed service. Each application for a new certificate had to be accompanied by a filing fee of $500; a $100 filing fee was required for applications to expand existing operations.

32. The most commonly employed restrictions were: (1) *area restrictions*, which limited the carrier's operations to a particular area of the state; (2) *"closed door"* restrictions, which allowed the carrier to service shippers at the end points in his route, but not to provide service at points along that route; (3) *"one way" restrictions*, which allowed a carrier to take cargo to a given location, but prevented him from returning with any; (4) *vehicle restrictions*, which limited the type, size, and number of vehicles used by a carrier; and (5) *commodity restrictions*, or limitations on the types of goods that could be hauled. A catalogue of examples of restrictions imposed upon operating authority may be found in the special report of the Committee on Regulatory Reform relating to surface transportation.

reform proposals, the committee needed to attain a broad understanding of the economic and legal issues to be presented in the reform debate.

On September 20 and 21, 1979, the first extensive meeting was held in which an examination of issues and precedents relevant to surface transportation regulation was conducted by the committee. The majority of this two-day hearing was devoted to definition of issues relating to the economic rationale of regulation. Information on trucking deregulation was gathered from video tape documentaries[33] as well as testimony from witnesses.[34] Further, because many of the arguments articulated by industry representatives mirrored those of the airline industry prior to congressional deregulation of air transportation, the chairman thought it worthwhile to examine the experience of airlines in their anticipation and implementation of deregulation. This diverse inquiry[35] provided the committee needed perspective with which to begin its evaluation process.[36]

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33. The committee took the novel approach of viewing videotape documentaries produced for public viewing in the "60 Minutes," "The Advocates" and "Congressional Outlook" series. It was anticipated and demonstrated that well-produced and researched video presentations would not only expedite committee understanding of the issues but also allow the members of the committee to evaluate first hand the arguments of leading participants in the surface transportation debate not otherwise available as live winesses.

34. Witnesses appearing included Mr. Ernie T. Litz, project director of the committee-commissioned issues study prepared by the Florida State University Department of Public Administration; Mr. Daniel Klein, senior planning economist Eastern Airlines, Miami, Florida; Mr. Edward Tempest of the Auditor General's Office, senior auditor assigned to preparation of Audit #9349, dated November 2, 1978, a "Performance Audit of the State Program for Motor Carrier Regulation;" Dr. Milton Kafoglis, Chairman of the Department of Economics and John Harland, Professor of Economics, Emory University, and former member of the Council on Wage and Price Stability; Mr. Jack Pearce, a Washington, D.C. based attorney representing a consortium of major shippers; and, Dr. James C. Miller, Co-Director and Resident Scholar, the Center for the Study of Government Regulation, American Enterprise Institute, Washington, D.C., and former member of the Council on Wage and Price Stability.

Testimony from the audience at the September 20-21 hearings was not allowed. This provoked a strong reaction from the Florida Trucking Association and its representatives. The association sent a letter to all house members charging that the committee had prejudged the issues and had denied the industry its opportunity to be heard prior to formulation of their position.

35. For an example of one of the many views presented, *see* OFFICE OF THE AUDITOR GENERAL, STATE OF FLORIDA; PERFORMANCE AUDIT OF THE STATE PROGRAM FOR MOTOR CARRIER REGULATION, (November 2, 1978) [hereinafter cited as AUDITOR GENERAL'S REPORT]. This audit concludes that "economic regulation of the motor carrier industry is only marginally effective and fosters economic inefficiency in the transportation system. Transportation services to Florida's citizens would not be adversely affected by deregulating most of the industry . . . . The public bears unnecessary costs in the form of state-sanctioned cartel pricing caused by economic regulation of those segments of the motor carrier industry that are naturally competitive. Their prices and services would be more effectively regulated by the free market." *Id.* at 13.

The only form of economic regulation the Auditor General retained related to motor carriers providing less than truckload consolidation services. *Id.* at 38.

36. The majority of this two-day hearing was devoted to definition of issues relating to the economic rationale of regulation, and questions and answers related thereto. Perhaps the most heated exchange of the two days occurred in dialogue between Mr. Edward Tempest of the Auditor General's Office and Representative C. Fred Jones. The methodology and assumptions of the Auditor General in reaching its conclusion that all trucking in Florida, other than

The broad agenda of the September 20-21 hearing forced the committee to operate on a tightly structured schedule. As announced at the outset of the hearing, all interested individuals were to be afforded ample opportunity to present their viewpoint at an appropriate time. The committee, however, was firmly committed to the orderly development of issues prior to opening the committee process to industry advocacy. This structured approach to the hearings was necessitated by the number of regulatory programs to be addressed and was consistent with the Regulatory Reform Act's placement of the burden of proof on those who advocate the continuation of regulation. Additionally, this approach recognized that industry advocates would work informally to apprise legislators of the industry's position.

LEGISLATIVE DEBATE: PASSENGER TRANSPORTATION

Although trucking was the predominant political issue in the surface transportation debate, the committee also undertook examination of bus and taxi regulation. These two modes of transportation were regulated by the PSC pursuant to the same statutory authority as in the case of trucking.[37] Because Florida has a tourist-based economy, a well-developed system of passenger transportation is a necessity. Therefore, when the committee became aware of significant problems regarding the availability and adequacy of regulated passenger transportation services, this area became one of major concern.

On January 30, 1980, in conjunction with the Committee on Tourism and Economic Development, joint hearings relating to regulation of passenger transportation were conducted in Orlando. Contrary opinions were expressed by representatives of the bus industry as to the need for continued regulation. The Florida Association of Competitive Passenger Carriers[38] urged the legislature to terminate economic regulation of motor carriers, while the Florida Motor Passenger Transportation Association[39] advocated continuation of extensive state regulation. At the same time, the consumer witnesses made it clear that under the present system there existed problems of quality and availability of charter and tour bus service.

The hearings also uncovered regulation problems in the charter bus industry. Tour operators throughout the state opined that charter bus service in Florida was totally unsatisfactory, and as a result Florida was in danger of losing the business of foreign tourists.[40] Managers from several of Florida's

"less than truckload," should be deregulated, was challenged by Mr. Jones as ignoring the issue of economic protection of Florida's truckers from the seasonal influx of "snowbirds." This issue, which was not often publicly debated, did linger just below the surface throughout much of the committee's deliberations. Mr. Jones argued that the state had a legitimate interest to protect by checking the seasonal flooding of the market.

37. *See* FLA. STAT. §323.01(7) (1979).

38. Florida Association of Competitive Passenger Carriers, P.O. Box 15830, Orlando, Fla. 32858.

39. Florida Motor Passenger Transportation Association P.O. Box 431160, Miami, Fla. 33143.

40. *Hearings on* FLA. STAT. §323, *Before the House Committee on Regulatory Reform and the House Committee on Tourism and Economic Development* (Jan. 30, 1980) (statements by Latin American Tour Operators Association; Instant World, Inc.; ABC Tours; Both World

largest tourist attractions[41] testified that the restrictions on charter operations greatly reduced the availability of bus transportation to their facilities. Representatives of the American Association for Retired Persons concurred with the opinion, based on their experiences with the existing system, that the bus industry should be opened up to competition.[42] Senior citizen trips to bowling alleys and movie theaters, for example, were being cancelled only hours before their scheduled departure.

Testimony was offered by a Florida Department of Commerce spokesman to the effect that the PSC had created a widening gap between supply and demand by not permitting the number of charter buses to expand with the growing influx of Florida's tourists. According to the department, restrictive entry regulations prevented eager entrepreneurs from meeting this burgeoning demand. Data developed by the committee tended to confirm this view point.

Reform efforts were spurred on by a newspaper story that appeared during the legislative session. It reported on the efforts of an entrepreneur in the small city of Perry, Florida, to obtain PSC permission to provide state employees commuter service to Tallahassee, some 53 miles away. Both Trailways and Greyhound, whose rates more than doubled those proposed by the applicant, protested the application even though their buses were not accessible to these commuters at times convenient to state office hours.[43] Public outrage ensued and government interference was again portrayed as over-protecting the interests of the large carriers while stifling the entrepreneurial aspirations of small businessmen.

From the outset, the committee's discussion of motor carrier regulation had centered upon two issues: entry-control and rate-setting. The evidence uncovered provoked considerable concern in the minds of many members of the committee. Possession of a certificate for regular route passenger service was found to be a requirement for holding charter bus authority. Charter service could only originate from a point where the carrier had regular route authority.

Entry into the intrastate bus industry was often a long and arduous task, requiring acquisition of a certificate of public convenience and necessity. As was the case with trucking, an applicant for such a certificate had the burden of proving:

Tours; Florida International Tour Operators, Inc.; Festival Tours; Globetrotter of Scandinavia; Tours Spectacular; Green Travel; BTM Travel Group Bramer Tours; Lindo's Tours).

41. Florida Attraction Association; Silver Springs Attraction; Seaworld.

42. *Hearings on* FLA. STAT. §323, *Before the House Committee on Regulatory Reform and the House Committee on Tourism and Economic Development* (Jan. 30, 1980) (statements by Doris Smith, Ester Morgan, and Alberta Weller).

43. The applicant, Mr. Henry Browning proposed to operate two 15 passenger vans between Perry and Tallahassee each week day. The market for his proposed service consisted of some 100 Perry residents who daily commuted the 106 mile round trip. Mr. Browning proposed a fare of $68 per month ($72 per month if paid one week at a time) as compared to $162 per month charged by Greyhound and $129 per month charged by Trailways. Browning's proposed schedule was to be consistent with the 8 AM-5 PM state office work day. Greyhound provided regularly scheduled service from Perry to Tallahassee departing at 4:10 and 11:17 AM; Trailways service departed Perry at 6:45 AM. Both companies return service departed Tallahassee at 4 and 8:30 PM.

1. the applicant was fit, willing and able to provide the proposed transportation;
2. there was a need for the proposed service;
3. allowing such service would not harm existing carriers; and,
4. existing carriers failed or were unable to provide the service.

The PSC's strict interpretation of these standards, coupled with the extreme difficulty experienced by many applicants in finding competent witnesses to support their application, resulted in no certificates being issued unless a determination was made that existing service was inadequate. Even a demonstration of immediate and urgent need for charter service would not suffice unless regular route authority was attached.[44]

Furthermore, more than eighty percent of new applications were protested, insuring a long and drawn-out process. Faced with these hurdles, applicants were encouraged to negotiate with protestants. In return for withdrawing its protest, a protestant often persuaded an applicant to amend the request for authority by removing those parts which would permit the applicant to compete with the protestant. A south Florida applicant, for example, was granted authority to transport workers only after amending his request to provide that his buses would lack air conditioning and rest room facilities.[45]

An alternative means of obtaining operating authority was to merge with or purchase, in part or whole, an existing carrier's certificate. Operating rights, however, were extremely expensive to obtain, particularly on lucrative routes which could support additional carriers. In 1977, a single regular route from Miami to Hollywood was sold for nearly $200,000, exclusive of any equipment.[46] Several touring and sightseeing routes from Volusia County to sporting events in other parts of the state and to Disney World were sold in 1977 for $250,000, also apart from any equipment.[47] These high sales prices were conclusive evidence of excessive profits. In the evolving view of a majority of the committee, the intrinsic value of the certificate authority was based upon the expectation of realizing above normal profits by operating in markets that were effectively insulated from competition.

The entry-controlling procedures acted to effectively cap the number of bus companies in Florida. An examination of the passenger bus industry in California revealed 884 carriers with charter or regular route authority compared to 35 in Florida. This data translated to one carrier for every 30,000 Californians, compared to one carrier for every 220,000 Floridians.[48]

Examination of rate regulation under the PSC raised equally serious questions concerning its operation in the public interest. Collectively set rates by passenger motor carriers denied consumers the benefit of competitive pric-

44. Examples of the difficulties encountered in applying for a certificate were plentiful. For instance, one central Florida resident endured 44 hours of hearings and expended $30,000 in legal and accounting fees, only to end up with a meager 8 mile route. *See* affidavit of Gary D. Malfield, filed with the Committee on Regulatory Reform (April 14, 1980).

45. *See* AUDITOR GENERAL'S REPORT, *supra* note 35, at 43.

46. *Id.* at 131.

47. *Id.* at 70.

48. *Id.* at 71.

ing. Further, stipulated prices foreclosed the opportunity for management to establish rates consistent with sound business decision making.

In his testimony before the committee on September 20, 1979, Dr. Milton Kafogolis argued that regulated rates were ten to twenty percent higher than those charged in unregulated markets. Although Dr. Kafogolis was referring to trucking rates, no evidence was subsequently adduced to indicate that rates for passenger carriage were not also artificially supported by rate regulation. Speaking in more general terms, Dr. Kafogolis stated:

> [I]t is alleged that (rate) regulation eliminates price discrimination. Price discrimination means charging a higher price to one customer than to another for substantially the same service. Only a monopolist can do this; if there is competition, a competitor will reduce rates for the customer that is being charged the high rate and in this way price differences will be minimized. Competition, not regulation, eliminates price discrimination.[49]

More fundamentally, rate regulation created incentives for regulated motor carriers to increase costs, not reduce them. Cost-plus rate setting and the virtual absence of price competition did not encourage efficient operations.

The regulatory system itself discouraged carriers from charging rates which accurately reflected market conditions. A carrier who in good faith wished to set rates at a competitive, cost-based level was encumbered by the time consuming requirement of securing PSC approval. Although a carrier's rate proposal was economically realistic at the time it was docketed, it might fail to reflect actual market conditions or the carrier's costs by the time it received approval. The cost of applying for a rate change created a further disincentive.[50] Thus, the regulatory system prevented carriers' spontaneous responses to changing market conditions.

In sum, the committee's investigation of entry-control and rate-setting failed to unearth evidence that the public health, safety and welfare would be substantially harmed in the absence of such economic regulation. To the contrary, most information tended to refute many of the contentions alleging economic regulation to be in the public interest.

THE TRUCKING DEREGULATION DEBATE

Contemporaneous with completion of the first round of hearings, the Committee on Regulatory Reform staff began to receive and analyze PSC responses to the committee's questionnaire. Consisting of some eighty questions, the questionnaire was designed to elicit a thorough statement of the PSC's understanding of the scope of its authority and responsibilities. Additionally, statistical and economic data were sought to aid the committee in assessing the

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49. *Hearings on* FLA. STAT. ch. 323, *Before the House Committee on Regulatory Reform* (Sept. 20, 1979) (statement by Dr. Milton Kafoglis).

50. Rate changes could cost up to $100,000. *Hearings on* FLA. STAT. ch. 323, *Before the House Committee on Regulatory Reform* (April 7, 1980) (statement by Florida Trucking Association).

quality of regulatory efforts and the degree to which regulation comported with current public needs.

Analysis of those responses revealed that the PSC relied largely, and in some cases exclusively, upon information provided by industry in making regulatory decisions. In 1978, for example, the PSC set rates for general commodity freight based on the operating ratios, intrastate revenue and expenses, and profit figures of only six out of fifty-seven certified carriers.[51] Although the PSC was statutorily required to review and approve rates filed with it, data supplied by the PSC indicated that, in 1978, of 186 rate organization tariff filings only six (three percent) were independently investigated; of 259 independently filed tariff charges filed in 1978 only four (1.5 percent) were independently investigated.[52]

During the debate the trucking industry repeatedly argued that small town service was unprofitable and could be continued only under traditional regulation. The PSC was unable to supply data that would support the industry's position when requested in the committee's questionnaire to supply such information.

In explaining the application procedure for obtaining a certificate of public convenience and necessity, the PSC detailed a seventy-eight step application and evaluation process, irrespective of appeals, that was routinely followed.[53] Also, witnesses who had previously applied to the PSC for certificates testified they had spent two or more years and many thousands of dollars seeking entry to the field, only to be denied full authority or forced to compromise the application to effect protest withdrawals. This evidence prompted the committee to begin defining the burden of proof that advocates of regulation would be required to meet if regulation was to be continued.

Preliminary expressions of committee sentiment for deregulation were bolstered by the disclosure of statistics collected in a study conducted at the University of Florida focusing on the issue of back-haul restriction.[54] Based on interviews with truckers and random samplings at highway inspection and weight stations, researchers concluded that at any given time approximately thirty percent of the trucks on Florida's roads were running empty. Thus, annual operation of this regulation, purportedly in the public interest, resulted in over 50,000,000 empty road miles and the non-productive consumption of approximately 15.6 million gallons of diesel fuel. Advocates for regulation responded that relaxing entry restrictions would put additional trucks on the highways and thereby increase consumption of fuel, but no evidence substantiating this claim was presented. In light of the prevailing legislative sensitivity to the issue of energy shortages, the cumulative weight of this and earlier de-

51. The cost of rate change applications as exemplified by the testimony of the Florida Intrastate Rate Bureau, which estimated annual expenditures of $100,000 on rate case alone.

52. Response to question #16, House Committee on Regulatory Reform Questionnaire to Public Service Commission.

53. Response to question #31, House Committee on Regulatory Reform Questionnaire to Public Service Commission.

54. Response to question #14, House Committee on Regulatory Reform Questionnaire to Public Service Commission.

scribed evidence only raised the level of proof which advocvates of continued regulation had to satisfy.

While considerable support for outright deregulation was expressed early in the process, substantial sentiment existed in favor of maintaining residual safety authority either in the PSC, which had markedly improved its safety program in recent years, or in some other appropriate agency. There was also apprehension concerning the impact that deregulation would have on Florida's transportation industry. Opinions varied from the extreme prediction of blood on the highways, to predictions that an overflow of trucks on the road would preclude economical operation. It was also feared that established firms would act in a predatory manner to consolidate market power and reduce the number of competitors, thereby creating a shared monopoly.[55] In reality, economic projections and market models notwithstanding, it was not possible to argue persuasively in favor of either result because there was no experiential frame of reference.

The antitrust issues inherent in the deregulation debate also were considered by the committee. Concerns expressed by those within the industry and the legislature prompted hearings in mid-March on these issues. Specifically, questions were posed about the legality of interstate rate bureaus, a practice discussed at length in an attorney general's opinion.[56]

That opinion cast substantial doubt on the propriety of operating intrastate rate bureaus. It relied on specific statutory language in the existing state antitrust provisions,[57] which prohibited any act or combination by any person or persons the purpose of which was "to prevent competition in the . . . transportation . . . of merchandise, produce or commodities."[58] The opinion noted that as a general rule exceptions to antitrust prohibitions were not to be implied lightly. In addition, authorization for legal operation of interstate rate bureaus was based upon an explicit exemption from antitrust law.[59]

There were also potential federal antitrust problems. A recent district court opinion, *United States v. Southern Motor Carriers Rate Conference*,[60] held that the intrastate rate making activities of rate bureaus were not insulated from prosecution under the Sherman Act. To clarify the issue the committee heard testimony from several expert witnesses.[61] These witnesses, however, could not agree on whether *Southern Motor Carriers* applied to the Florida situation.

55. *See* T. Maze, Supply of Florida Produce Hauling Truck Service (1980).
56. OP. ATT'Y GEN. FLA. 078-53 (1978).
57. FLA. STAT. §542.05 (1979).
58. *Id.* §542.05(1)(c).
59. 49 U.S.C. 5 (1976).
60. 467 F. Supp. 471 (N.D. Ga. 1979).
61. The committee heard testimony of Mr. William Bryant, section chief of the Florida Attorney General's Antitrust Unit, Mr. Eliot Seiden, chief of the United States Department of Justice Antitrust Division's Transportation Section, Mr. J.F. Brookshier, chief of Tariff Bureaus for five of Florida's ten intrastate rate bureaus and Mr. James Wharton, attorney representing the Florida Intrastate Rate Bureau before the committee. Mr. Bryant recounted the evolution of the antitrust law relating to rate bureaus and spoke in generalized terms about the possible response of state and federal law to various situations which might arise in an unregulated market. Mr. Seiden testified that the rule of the *Southern Motor Carriers Rate Case* was directly applicable to the situation extant in Florida and that, upon conclusion of the appeal

Another factor that was important to the committee was the attitude of small business. Evidence of his attitude was collected by the National Federation of Independent Business (NFIB), a national organization of small businesses with more than 20,000 Florida members. This organization had recently completed an opinion survey on issues expected to come before the Florida Legislature in 1980. Copies of the ballot were delivered to each representative and senator on the eve of the 1980 session. Among the questions posed to the membership was "should the intrastate trucking industry in Florida be deregulated?" Based on a return of approximately fourteen percent of ballots distributed, a response considered sufficient for purposes of statistical verifiability, sixty-seven percent favored deregulation, nineteen percent opposed it, and fourteen percent were undecided or had no opinion.

These polling results stood in marked contrast to representations made by industry advocates to the effect that small business favored continued regulation. The results of the NFIB poll were particularly interesting when viewed in relation to a 1979 national poll of its members. In the earlier poll a less substantial majority, fifty-two percent, voiced a preference for deregulation when the same question was posed. This measurably stronger sentiment for deregulation expressed by Florida business generated substantial momentum for major reform.

On the day these results were announced, April 7th, the Committee on Regulatory Reform convened for the purpose of eliciting industry opinion. After PSC officials briefly answered committee member questions concerning the issues of safety regulation and PSC procedure for analysis of tariff filings, industry representatives argued that America's transportation was the world's best. The industry maintained that this was a result of a carefully constructed and controlled regulatory environment. The truckers also argued what had become something of a catch-phrase for the industry, "If it ain't broke, don't fix it."

Questions from committee members focused largely on the small-town service issue. Considerable conflict appeared between the testimony of industry spokesmen and small-town shippers and receivers. The industry contended small-town service was an economic loser and was continued merely to meet the common carrier obligation imposed by the regulatory scheme. On the other hand, small-town shippers and receivers asserted that small-town service, although within the carriers' authority, was in many instances currently unavailable. Industry testimony also appeared at variance with the record of such highly profitable carriers as United Parcel Service and Yellow Freight, which had developed their operations on small town, small package service.

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of that case to the Court of Appeals for the Fifth Circuit, the Justice Department would review the need to institute proceedings in Florida to assure compliance with that legal standard.

Mr. Brookshier testified that there would be chaos in the industries should carriers be precluded from establishing uniform rates for carriage of similar commodities between identical points and that the operation of rate bureaus served the best interests of the shipping and consuming public. Mr. Wharton took exception to the analysis of Mr. Seiden with regard to applicability to the Florida situation of the rule of *Southern Motor Carrier Rate Case* and further argued that industry historically had been mandated to file rates uniformly and were, thereby, only complying with the state's administrative authority.

In the aftermath of the April 7 meeting, it became obvious that a solid majority of the committee favored either outright and immediate deregulation or a phase-out of regulation over a definite time period. This later option was advocated by the committee staff; it was their judgment that opening entry while retaining temporary rate control was the best public policy. Gradual extinguishment of regulation would allow new competitors to enter and establish themselves in the market free of the arduous task of certification and without the operating limitations imposed by existing regulation. Rates would then be fully deregulated after an eighteen month period. This phasing out of rate regulation, it was believed, would enable new entrants to establish a market foothold without confronting a potentially volatile pricing situation.

As the Regulatory Reform Committee staff developed reform options, the Senate Commerce Committee, the senate counterpart of the Regulatory Reform Committee, proceeded to consider its proposed bill. The bill favorably reported by the Commerce Committee proposed modest reforms but left the regulation system essentially intact. The Regulatory Reform Committee used the senate bill and the proposal of the PSC as a reference point upon which it could focus in fashioning its proposal.

Neither the majority of the committee favoring major reform nor the staff questioned the ability of the surface transportation industry to operate successfully in a free and competitive market. Considerable concern, however, had arisen over the potential for major firms to destroy fledgling competition by the selective exercise of existing market power. It was feared that new competition would be thwarted by their driving prices below cost in some areas while subsidizing this loss by price increases in other areas. Though such conduct would clearly constitute a violation of traditional antitrust standards, Florida's antitrust statute[62] was generally perceived to be an ineffective enforcement weapon.[63] Therefore, some residual control of pricing during the "evening-out" process caused by opening of entry was believed essential.

Additional concern was prompted by the persistent rumor that if Florida deregulated intrastate trucking, thereby becoming the first state to take such action, national interests favoring continued regulation would adopt a "lose the battle but win the war" approach and move to insure the failure of deregulation in Florida. By intentionally interfering with the industry's adjustments to natural market conditions, it was entirely possible that a chaotic situation could be stimulated. This result would build support for industry arguments and blunt the impetus for similar reform in other states and at the federal level.

LEGISLATIVE ACTION

Entering the session on April 8, it was widely perceived that the house and senate would adopt completely divergent positions with regard to the issue of surface transportation regulation. The modest amendments contained in the

62. FLA. STAT. §§543.02-.13 (1979).

63. At this point in the 1980 legislative session there was no guarantee that the efforts of the Attorney General to reform FLA. STAT. §§542.01-.13 would be successful. However, chapter 542 was successfully revised by the 1980 Legislature. *See* 1980 Fla. Laws, ch. 80-28.

Senate Commerce Committee proposal were correctly perceived as being radically different from the approach anticipated to emanate from the house. It was generally agreed the two dramatically divergent approaches would not be reconciled, if at all, until convening of a conference committee late in the session.

In the face of an intensive and well-directed lobbying effort by the Florida Association of Competitive Passenger Carriers, a coalition of relatively small tour bus companies, sufficient votes were garnered early in the Senate's deliberation on the Commerce Committee Bill to push through an amendment opening entry in the limited area of passenger transportation. With the door opened this far, a spirited floor fight was launched, which, in a matter of two hours, resulted in the adoption of three dozen major amendments that effectively deregulated the industry.

With an unacceptable bill coming out of the senate, industry advocates were confronted with a far different situation than they had anticipated. Barring a reversal by the full senate on the bill's final reading, industry spokesmen were faced with acceptance of the house version or the prospect of sunset and a totally deregulated market. It was at this point in time that advocates for the industry first appeared favorable to deregulation, although this position may have been mere posturing.

Because the dynamics of the legislative process had been altered so dramatically, attention focused again on the House Committee on Regulatory Reform and the release of its reform package. While the "phase-out" approach, as previously described, was tentatively considered by the leadership as the most appropriate approach to reform advocates for outright deregulation urged the committee to end the debate quickly and report that there would be no house bill. Adoption of this suggestion would have put the industry in the uncomfortable position of having to advocate house adoption of a bill which it opposed, trying to make needed amendments on the floor. Alternatively, the industry could have attempted to kill the senate bill and thereby guarantee the result it most wanted to avoid: deregulation and a wide open market.

After consideration of available options, it was decided to pursue the original course of action and present the phase-out proposal to the committee. The proposal was reported favorably by the committee with virtually no amendments and was sent up for consideration to the full house.[64] Prior to floor debate of the issue, an informal conference was held with representatives of the industry and the house leadership. During the discussion the trucking industry argued that the section of the bill dealing with rates, allowing a band within which rates must remain, was unacceptable to the industry. Additionally, the industry felt that the bill required some restrictions to keep out-of-state companies from entering the state and cutting prices below that which Florida-based companies could profitably charge. These discussions resulted in several amendments which were adopted on the floor with the understanding that the only remaining issue to be negotiated with the senate concerned the rate provisions.

64. Fla. H.R. 1635 (Reg. Sess. 1980).

This bill was passed by the house by an overwhelming vote and went on to the senate for consideration. In the Senate Commerce Committee, however, many of the industry backed proposals concerning entry, rates and routes were reintroduced into the bill. This addition caused negotiations between the house and the senate to break down.

In the closing days of the legislative session, with a deadlock between the two houses of the legislature apparent, the Speaker of the House met informally with the leaders of the trucking lobby. He indicated that it would be necessary for the industry to accept modification of the senate's position. Otherwise, the house would take no action. The result would be a sunsetting of the entire state trucking regulatory scheme. The industry indicated that they would prefer total deregulation over the phase-out proposal developed by the House Committee on Regulatory Reform. Accordingly, the Speaker accepted this reaction as a final chapter in the legislative battle and informed members of the house leadership that the issue had been resolved for the 1980 legislative session, and that the house would not report out a bill. Regulation of surface transportation would be sunsetted.

Safety Regulation

Once it was determined that economic regulation of the surface transportation industry would expire on July 1, 1980, the critically important consideration of continued safety regulation remained to be resolved. Widespread legislative support for reestablished safety regulation was perceived by the industry as possibly providing leverage to salvage economic regulation.

The necessity for adequate safety regulation of motor vehicles and drivers was accepted by all parties involved in the legislative negotiations. Questions arose, however, as to the past effectiveness of the safety program. Data gathered in the early stages of the hearings process indicated that emphasis was often placed on inspecting vehicles to insure the driver possessed the proper certificate for the route traveled and commodities carried, rather than inspecting the actual physical condition of the vehicle or driver for safety of operation. No one questioned, however, the need to protect the public from unsafe vehicles and drivers.

Proponents of continued economic regulation claimed that highway safety would deteriorate without pervasive economic regulation. They contended that without economic regulation the PSC, or a successor agency, would not have the muscle to enforce safety standards. Nonetheless, the Committee on Regulatory Reform determined that economic and safety regulation were totally distinct and legally severable policies and procedures. On the federal level both airline and trucking regulation distinguish between economic and safety functions.

Various safety proposals were considered by the house. One such proposal left safety enforcement under the PSC.[65] On June 4, 1980, the house passed this proposed bill by a vote of 92 to 2. On reference to the senate, the bill died in the Senate Committee on Rules and Calendar.

65. Fla. H.R. 1869 (Reg. Sess. 1980).

On June 7, 1980, the final day of the regular legislative session, the house passed another bill as a final attempt to retain some form of safety regulation.[66] The original intent of this proposal was only to grant Dade County preemptive authority (over the municipalities in Dade County) to regulate taxicabs. As an available vehicle to retain safety jurisdiction, the bill was amended to include a transfer of authority for safety inspection and personnel from the PSC to the Florida Department of Transportation. The senate again failed to respond to this initiative, and the regular session ended without the enactment of any legislation providing for continued safety inspection.

The next attempt to continue safety inspection centered on the possibility of transferring PSC personnel and funding to the United States Department of Transportation. This department in theory had authority over highway safety, but in practice lacked the fiscal and physical resources to adequately perform the task.[67] Under the provisions of the sunset law, funding for all personnel and functions was continued for one year, although no authority was granted to actually carry out any task should the statute not be reestablished. The possibility of an executive transfer of PSC personnel, equipment and funding to the United States Department of Transportation was investigated but as a result of the special session called by the governor, no such decision was reached.

During the special session of the legislature,[68] a bill to re-establish a safety program was introduced in the senate.[69] This bill consolidated weight and safety inspections by transferring employees of the PSC engaged in safety inspections and employees of the Florida Highway Patrol engaged in weight inspection to the Florida Department of Transportation. The bill passed both houses and was signed into law on July 1, 1980.

CONCLUSION

Florida thus became the first governmental entity to move from an extensively regulated economic environment for surface transportation to one essentially devoid of regulation of rates, routes or commodities which may be carried. In so doing, the legislature demonstrated that it could withstand extreme pressure from well-entrenched interest groups and advanced the cause of an accountable government. Retrospective analysis of Florida's sunset review experience gives cause for optimism that a "surgical" approach to reform, emphasizing case-by-case analysis and reform of existing programs, can prevail over the "meat-ax" approach of across-the-board budget and personnel cuts. The latter course is merely a reaction to the public dissatisfaction with the cost and size of government. It is not necessarily responsive to the public's need for ongoing government involvement in specific areas to assure to all a minimum of opportunity and a reasonable quality of life.

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66. Fla. H.R. 39 (Reg. Sess. 1980).

67. It was determined that in Florida there were four United States Department of Transportation officials monitoring various aspects of surface transportation.

68. Fla. S. 15-D (Spec. Sess. 1980).

69. 1980 Fla. Laws, ch. 80-298.