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MOTOR CARRIER DEREGULATION IN FLORIDA: BEFORE, DURING AND AFTER

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I. INTRODUCTION

On July 1, 1980, chapter 323, Florida Statutes,¹ was repealed.² The law had provided for regulation of intrastate motor carriers by the Florida Public Service Commission (PSC).³ Since 1929, Florida had regulated the entry into, rates for and safety of the business of transporting persons or freight for hire over intrastate routes.⁴ The repeal of this regulation was pursuant to Florida's "sunset review" process.⁵

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1. (1979) (repealed 1980).

2. The repeal was mandated by the Regulatory Reform Act of 1976, ch. 76-168, § 3, 1976 Fla. Laws 295, *as amended* by Act of June 30, 1977, ch. 77-434, § 1, 1977 Fla. Laws 1846.

3. See FLA. STAT. ch. 323 (1979) (repealed 1980). The PSC has been known by other names. Originally what is now the PSC was called the Railroad Commissioner. Act of June 7, 1887, ch. 3746, 1887 Fla. Laws 118. This designation was followed in 1947 by a change to Florida Railroad and Public Utilities Commission. Act of June 16, 1947, ch. 24095, 1947 Fla. Laws 1048. Then, in 1963 the name was changed to Florida Public Utilities Commission. Act of June 3, 1963, ch. 63-279, 1963 Fla. Laws 656. Two years later the title finally became the Florida Public Service Commission. Act of May 14, 1965, ch. 65-52, 1965 Fla. Laws 87 (current version at FLA. STAT. § 350.001 (1979)).

4. See Act of July 1, 1929, ch. 13700, 1929 Fla. Laws 348.

5. The sunset process is retained in the Regulatory Reform Act of 1976, FLA. STAT. § 11.61-6105 (1979). Florida's sunset law was the first state sunset enactment to become effective. Price, *Sunset Legislation in the United States*, 30 BAYLOR L. REV. 401, 416 (1978). Colorado was the first state to enact sunset legislation. However, Florida's law became effective prior to the Colorado provision. *Id.*

Sunset is a statutory process which automatically terminates governmental agencies and programs. The legislature must enact saving legislation to prevent the nullification. Task Force on Critical Problems, N.Y. Senate Research Service, *Sunset . . . Its [sic] not all Rosey* 3 (April 1977). In Florida the process began with the enactment of the Regulatory Reform Act of 1976, ch. 76-168, 1976 Fla. Laws 295 (current version at FLA. STAT. §§ 11.61-6105 (1979)). As the name implies, the act affects only those businesses and professions which the state licenses or regulates. FLA. STAT. § 11.61 (2)(a)(1979). (The scope of other state sunset legislation ranges from an automatic repeal of all state functions to a termination of a few selected agencies. Price, *supra*, at 426).

The act states the legislative intent, FLA. STAT. § 11.61(2) (1979), provides the procedure for legislative review, *id.* § 11.61 (3)-(9), and specifies certain repeal dates for the enabling legislation of the affected agencies and programs, *id.* § 11.6105. The act provides that:

(2) It is the intent of the Legislature:

Florida thereby became the first and only state to deregulate motor carriers.⁶ New Jersey has always had minimal regulation of certain types of carriers,⁷ and subject to voter approval of a constitutional amendment, Arizona will also substantially deregulate mo-

(a) That no profession, occupation, business, industry, or other endeavor shall be subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(6) That the state shall not regulate a profession, occupation, business, industry, or other endeavor in a manner which will unreasonably [sic] adversely affect the competitive market.

(c) To provide systematic legislative review of the need for, and the public benefits derived from, a program or function which licenses or otherwise regulates the initial entry into a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

Id. § 11.61(2) (emphasis added).

Section 11.611(8) also provides that by January 1, 1977, the Speaker of the Florida House of Representatives and the President of the Florida Senate were to appoint a select joint committee to oversee the implementation of the act. Upon assignment by the Speaker and the President, substantive committees of both Houses are responsible for performing the required evaluation of the affected programs. *Id.* Review of the programs begins two years prior to the respective repeal dates. Recommendations of the reviewing committees must be completed by January 1 of the year of the repeal. These committees may suggest modification, continuation or repeal of the programs. *Id.* § 11.61(7).

To decide whether to prevent the repeal, the legislature must consider six probing questions:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another, less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Id. § 11.61(4).

After this consideration, the legislature may reestablish the program or function for less than six years. At the end of the specified period, the process begins again. *Id.* § 311.61(6).

The act also provides for the transition of repealed programs; *i.e.*, if a program is abolished, its funds and personnel remain for one year after the repeal, *id.* § 11.61(5); any cause of action pertaining to the terminated program survives the repeal, *id.* § 11.61(9); the Florida Attorney General prosecutes these affected actions, *id.*

6. Telephone interview with Martin D. Zell, Deputy Director for State/Community Affairs, Interstate Commerce Commission, Washington, D.C. (Sept. 10, 1980).

7. See generally W. Allen, S. Lonergan & D. Plane, Examination of the Unregulated Trucking Experience in New Jersey (July, 1978) (available from Office of University Research, U.S. Department of Transportation, Washington, D.C. 20590).

tor carriers in 1982.⁸

Those that favored Florida's motor carrier regulatory system emphasized the stability and predictability of an economically regulated transportation system. Without economic regulation, it was argued, destructive competition would result from an overly competitive market. Stable and reasonable rates were cited as preferable to the fluctuating and predatory pricing that would result from unregulated rates.⁹ Another argument emphasized the obligation of a regulated carrier to serve small communities in its operating territory—service which would be threatened if regulation ceased.¹⁰ The general theme of proregulation advocates was the assurance of essential service at reasonable rates.

By contrast, those favoring deregulation emphasized the increased operating efficiency, innovation in service, and overall decrease in rates that would result from reliance upon the free market. Economic inefficiencies, such as empty backhauls, were said to result from unreasonable restrictions of the operations of carriers. Rate regulation was said to preclude price competition and to discourage service innovation. Predatory pricing was discounted as unlikely because rational economic behavior would dissuade large carriers from charging rates below cost. If one carrier were driven out of business, another carrier would soon enter when the large carrier's rates began to climb. Behind these arguments was the basic ideological aversion to subjecting prospective and existing business persons to the burdens of restrictive governmental regulation.¹¹

The aim of this article is to comprehensively review regulation as it existed prior to the repeal, how the repeal occurred, and what laws remain which affect intrastate motor carriers. The final section is a summary of the statutes and common law that will now "regulate" the motor carrier industry.

8. Ch. 203, § 1, 1979 Ariz. Sess. Laws 803 repeals ARIZ. REV. STAT. § 40-601-620 on July 1, 1982, if ARIZ. CONST. art. 15, § 2 is amended to remove the power of the Arizona Corporation Commission to regulate motor carriers.

9. See J. Mills, *The Pros and Cons of Trucking Regulation 2-3* (reprint 95 March, 1979) (available from American Enterprise Institute, 1150 17th Street N.W., Washington, D.C. 20036).

10. *Id.*

11. *Id.* at 304.

II. HISTORY

A. General

Motor carrier regulation began on the local level in response to the competition between the jitney and the street car. Street cars were operating from municipal franchises which obligated these railways to maintain the streets and to pay certain taxes.¹² The franchisees appealed to the municipalities for relief from the competitive advantage engendered from the jitney operators' unregulated status.¹³ The cities responded by creating obligations for jitney operations: entry, bonding, safety, routes and hours of operation.¹⁴ The states joined the regulatory process in 1915 with New York leading the way.¹⁵ Its law defined a motor carrier as a common carrier and required the issuance of a certificate of convenience and necessity prior to operation.¹⁶

By 1928, forty-three of the forty-eight states regulated passenger motor carriage and thirty-three regulated freight transportation.¹⁷ Four years later, in 1932, all states but one regulated passenger transportation while thirty-nine regulated motor carriage of freight.¹⁸ The primary pressure for regulation of motor carriers came from the railroads through the Interstate Commerce Commission because of the vigorous competition facing the railroads from the growing trucking industry.¹⁹

B. Florida

In 1929, Florida authorized its Railroad Commission to regulate motor carriers for hire.²⁰ The original 1929 act required all persons operating motor vehicles in the business of transporting persons or property for compensation or as a common carrier in Florida to

12. Eckert & Hilton, *The Jitneys*, 15 J.L. & ECON. 293, 304 (1972).

13. *Id.* at 304.

14. *Id.* at 308-22.

15. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*, 79 COLUM. L. REV. 426, 485 (1979).

16. *Id.* A certificate of convenience and necessity is the license to operate used by most public utility regulatory agencies. Prior to issuance of the certificates, the agency usually considers the price charged by the applicant, the number of competitors providing the service of the applicant and the general public need for the service of the applicant. *Id.* at 426-27.

17. T. MOORE, *FREIGHT TRANSPORTATION REGULATION* 25 (1972).

18. *Id.*

19. *Id.* at 26.

20. Act of July 1, 1929, ch. 13700, 1929 Fla. Laws 348.

obtain a certificate of public convenience and necessity.²¹ Two years later the United States Supreme Court in *Smith v. Cahoon*²² held this act unconstitutional on equal protection grounds because no distinction was made between "common carriers" and "private carriers for hire," which impermissibly subjected both types of carriers to identical obligations.²³ Such regulation of the business of private carriage was held to be "manifestly beyond the power of the state."²⁴ Chief Justice Hughes' opinion offered little discussion on the difference between the two types of carriers; however, he noted that the appellant was employed under an exclusive contract with one shipper and had never "held himself out" as a common carrier.²⁵

The Florida Legislature responded in 1931 with an act which provided three separate schemes of regulation of entry for "common carriers," "private contract carriers" and "for hire" carriers.²⁶ The separation of regulation into three schemes did not prove to be of major significance. The difference between "common carriers" and "private contract carriers" was slight in terms of regulatory barriers to entry. The applicability of "for hire" permitting was increasingly limited.²⁷

21. *Id.* § 2.

22. 283 U.S. 553 (1931).

23. *Id.* at 566.

24. *Id.* at 563.

25. *Id.* at 561.

26. Act of June 15, 1931, ch. 14764, 1931 Fla. Laws 486. "Common carriers," left undefined, were required to obtain certificates of public convenience and necessity, and the PSC was required to take into consideration the effect that the granting of such certificate may have upon transportation facilities within the territory sought to be served by the applicant and the effect upon transportation within that territory. *Id.* § 3. "Private contract carriers," defined as carriers which continuously or recurrently transport carriage under the same contract, were also required to obtain certificates of public convenience and necessity. The PSC was required to consider:

the effect that the granting of such certificate may have upon transportation facilities within the territory sought to be served by said applicant, and/or congestion of traffic on the highways, and/or safety of traffic moving on the highways under such operations in relationship to other private and/or public traffic permitted by law to move over the same roads or in the same territory, and also the effect upon transportation as a whole within said territory.

Id. § 4. "For hire" carriers, defined as vehicles transporting persons or commodities for compensation, could obtain a permit as a matter of right without proof of public convenience and necessity. *Id.* § 5.

27. In 1949 the definition of "for hire" was amended to limit permitting as a matter of right to transportation for compensation in "single, casual, and non recurring [*sic*] trips." Act of June 13, 1949, ch. 25418, § 1, 1949 Fla. Laws 1017. Furthermore, "for hire" permitting for transportation of passengers was specifically limited to transportation in vehicles with a capacity of seven passengers or less. *Id.* § 1. In 1977 a major revision of ch. 323

The 1929 and 1931 acts did not specify the intent of the legislature. However, the Florida Supreme Court found an opportunity to express its interpretation of the Act's policy in *Florida Motor Lines, Inc. v. State Railroad Commission*.²⁸ It found that maintenance of taxpayer supported roads and safety of the public was paramount in the legislative mind.

Until recent years public transportation facilities for hire in Florida were afforded almost entirely by railroad and boat lines; the use of vehicles on the public roads in the state for transportation of persons and property for compensation being relatively negligible. Since motor vehicles have come into general utility and the construction of hard-surface highways throughout the state with public funds, the business of using such vehicles in the transportation of persons and property for compensation over the public roads in the state has attained such proportions as to require statutory regulation to conserve the roads and safety in the use of them by the public.²⁹

A later decision emphasized the economic protectionism intended for existing carriers.

It is not the policy of [the law] to encourage destructive competition with existing transportation facilities and thereby decrease or destroy such existing services and deprive the general public thereof. The policy of the law is to avoid duplication of investments and maintenance and operating expenses and avoid inordi-

deleted the definition of "for hire" and limited permitting as a matter of right to only four specific types of transportation. Act of June 30, 1977, ch. 77-434, § 8, 1977 Fla. Laws 1767 (current version at FLA. STAT. § 323.05 (1979) (repealed 1980)). The types of carriers which received permits as a matter of right were (1) motor carriers engaged exclusively under contract with the United States government, (2) motor carriers engaged exclusively in carrying property consisting of ordinary livestock, seafood or agricultural products (excluding those that were frozen or processed), (3) transportation purely incidental to a person's primary business of maintenance, repair or installation, provided such transportation is in a single, casual and nonrecurring trip and required the performance of substantial services in addition to transportation, and (4) transportation of houses and buildings formerly attached to realty, not including mobile homes or manufactured housing. *Id.* In addition, the 1977 revision reflected actual practice by placing common carriers and contract carriers under identical entry requirements. *Id.* § 4 (current version at FLA. STAT. § 323.05 (1979) (repealed 1980)). The law also provided a definition of common carrier for the first time: "any person engaged in motor carrier transportation of persons or property for compensation over the public highways of this state who holds his services out to the public and provides transportation over regular or irregular routes." *Id.* § 1 (current version at FLA. STAT. § 323.01(19)(1979)(repealed 1980)).

28. 132 So. 851 (Fla. 1931).

29. *Id.* at 857.

nate commercial traffic on the highways that will tend to congestion and danger to traffic in general. Where a new carrier seeks to enter despite the fact that another is in the field, it is therefore generally held to be necessary for it to show that the existing service is not adequate to serve the public need.³⁰

III. MOTOR CARRIER REGULATION IN FLORIDA—PRE-SUNSET

A. Entry

Obtaining a certificate of public convenience and necessity was no easy matter. As the name implied, the granting of these certificates was limited to what public convenience and necessity required. Relevant criteria for meeting this standard have been in the statutes since the original 1929 act.³¹ The statutes had always specified that the primary focus was not upon the applicant's qualities, but upon existing carriers—how good a job they were doing, and how badly their business would be hurt. In fact, from 1931 to 1977 the *only* listed statutory factors dealt with existing carriers and made no mention of the applicant's qualifications.³² Unchanged during this earlier period was the following proviso: "[T]he commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have upon transportation facilities within the territory sought to be served by said applicant, and also the effect upon transportation as a whole within said territory."³³

A 1977 amendment revised the entry criteria, listing six separate factors which the PSC was required to consider.³⁴ For the first

30. *Central Truck Lines, Inc. v. Railroad Comm'n*, 160 So. 26, 30 (Fla. 1935).

31. Act of July 1, 1929, ch. 13700, § 2, 1929 Fla. Laws 349.

32. Act of June 15, 1931, ch. 14764, § 3, 1931 Fla. Laws 488.

33. Ch. 14764, § 3, 1931 Fla. Laws 488.

34. Act of June 30, 1977, ch. 77-434, § 4, 1977 Fla. Laws 1767 (current version at FLA. STAT. § 323.03(4) (1979) (repealed 1980)). The six factors were:

(a) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs.

(b) The present necessity for the certificate in relation to the volume of existing or projected future traffic over such route or in such territory.

(c) The financial ability of the applicant to furnish adequate, continuous, and uninterrupted service at the times required therefor, and to meet the financial obligations of the service which the carrier proposes to perform.

(d) The effect on existing transportation facilities and service of all kinds, and particularly whether the granting of such certificates will or may seriously impair essential public service as provided by existing motor carriers.

(e) The fitness of the applicant properly to perform the proposed service and to conform to provisions of this part and the rules of the [PSC].

(f) The feasibility of the transportation proposed.

time the statutes referred to the fitness and financial ability of the applicant, but the effect of competition on existing transportation remained a relevant factor.

If the effect on existing transportation was important, the adequacy of existing service was paramount. Virtually unchanged throughout the history of the law was the following mandate to the commission:

When application is made by an Auto Transportation Company for a certificate to operate in a territory or on a line already served by a certificate holder under this Act the Commission shall grant same *only* when the existing certificate holder or holders serving such territory fail to provide service and facilities to the satisfaction of said Commission.³⁵

By reading the plain words of the statute, the courts consistently held that it was necessary for the commission to find that existing transportation was inadequate before a new certificate could be granted.³⁶ One of the first reported cases interpreting this provision explained that it was not the policy of the state to encourage "destructive competition" with existing carriers, rather the policy was to avoid duplication of investments, maintenance and operating expenses.³⁷

The burden was on the applicant to show that existing carriers were failing to provide reasonably adequate facilities and services.³⁸ This was often a difficult burden to meet. In the case of *Commercial Carrier Corp. v. Mason*,³⁹ the commission granted the extension of an applicant's certificate based upon the testimony of a potential shipper who desired the services of the applicant and who felt that existing carriers could not satisfactorily provide the services.⁴⁰ In fact, the shipper stated that if the application were denied, it would resort to private employment rather than take ad-

Id.

35. Act of July 1, 1929, ch. 13700, § 3, 1929 Fla. Laws 348 (current version at FLA. STAT. § 323.03(5) (1979) (repealed 1980)) (emphasis added).

36. See generally *Blocker's Transfer & Storage Co. v. Yarborough*, 277 So. 2d 9 (Fla. 1973); *Wells Fargo Armored Serv. Corp. v. Mason*, 196 So. 2d 419 (Fla. 1967); *Commercial Carrier Corp. v. Mason*, 177 So. 2d 337 (Fla. 1965); *Greyhound Corp. v. Carter*, 124 So. 2d 9 (Fla. 1960); *Great S. Trucking Co. v. Mack*, 54 So. 2d 153 (Fla. 1951).

37. *Central Truck Lines, Inc. v. Railroad Comm'n*, 160 So. 2d 30 (Fla. 1935).

38. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 318 (Fla. 1974).

39. 177 So. 2d 337 (Fla. 1965).

40. *Id.* at 339.

vantage of the available service.⁴¹ The court nevertheless reversed the commission's order granting the extension of the certificate, finding nothing in the record to support the commission's conclusion that existing service was inadequate.⁴² The opinion stated that the "wishes, preferences or feelings of [the shipper] or any other shipper in support of a particular carrier applicant are not enough absent an evidentiary factual showing that the application meets statutory standards."⁴³ In this case and others it was held that existing carriers must have a reasonable opportunity to demonstrate that they were able to render satisfactory service to a shipper prior to the issuance of a certificate to another carrier.⁴⁴ Later cases did make it clear, however, that this rule did not mandate that the commission first require, or formally require, such service if existing carriers had had an opportunity to provide service and had failed to do so.⁴⁵

Existing carriers were given ample opportunity to prove that they were providing adequate service and that their business would be hurt by the granting of a new certificate. Upon the filing of an application, the PSC was required to give notice to all motor carriers serving any part of the proposed route.⁴⁶ Any substantially affected person could file a protest within thirty days of notice. If one or more protests were filed, the PSC was required to hold a hearing between twenty and ninety days of notice. If one or more protests were filed, the PSC was required to hold a hearing between twenty and ninety days after the notices were served.⁴⁷ Hearings would generally be held before hearing examiners employed by the PSC, who submitted their findings to the commissioners for consideration in determining the final order.⁴⁸

41. *Id.* at 338.

42. *Id.* at 340.

43. *Id.* at 339-40.

44. *Id.* at 339. See also *Tamiami Trail Tours v. Carter*, 80 So. 2d 322, 329 (Fla. 1955); *Redwing Carriers, Inc. v. Mack*, 73 So. 2d 416, 420 (Fla. 1954).

45. *American Sightseeing Tours, Inc. v. Mayo*, 326 So. 2d 168, 171 (Fla. 1976); *Alterman Transp. Line v. Carter*, 88 So. 2d 594, 596 (Fla. 1955).

46. FLA. STAT. § 323.03(2) (1979) (repealed 1980). This section also required that notice be given to the mayor or chief magistrate of each city and town in or through which the applicant desired to operate, to the chairman of the board of county commissioners of each county in which the proposed service would be operated and to the Florida Department of Transportation. *Id.*

47. *Id.*

48. See FLA. STAT. § 120.57(1)(a)2 (1979), which exempted the PSC from the requirement that hearing officers assigned by the Division of Administrative Hearings of the Florida Department of Administration must conduct all formal hearings in which substantial interests of a party are determined. This exemption was eliminated by the 1980 Legislature.

The law required that every operating certificate granted must specify the territory and highways in and over which the grantee was permitted to operate, the specific commodities to be transported, and any additional conditions deemed by the PSC to be necessary or proper and in the public interest.⁴⁹ In practice, carriers protesting an application would have a significant impact on the type of authority eventually granted, not only as participants in the administrative process, but outside the process as well. After an application was submitted and protests filed, the parties would often reach a private agreement whereby the protesting carriers would agree to withdraw their protests in exchange for the applicant's amendment to his application.⁵⁰ In this way, existing carriers could persuade prospective competitors to eliminate certain routes, territories, or commodities from the operations applied for, thereby eliminating or diminishing the threat of competition. Bargaining of this kind would often result in operating certificates providing for circuitous routing, "closed-door" restrictions by which certain areas had to be traveled without loading or unloading, and commodity restrictions which very narrowly limited the types of goods which a carrier was authorized to transport. Such operating restrictions could cause a carrier to travel empty ("deadhead") on the backhaul of return trip.⁵¹

Regulation of entry by the PSC proved to be a significant barrier to those persons desiring to enter the motor carrier transportation business.⁵² Statistics indicate that applicants for new authority seldom obtained the authority originally requested, and often obtained no authority at all.⁵³

Act of July 1, 1980, ch. 80-289, Fla. Laws 1244.

49. FLA. STAT. § 323.03(7) (1979) (repealed 1980).

50. Staff of the Florida Senate Commerce Committee, *A Review of Chapter 323, Florida Statutes Motor Carriers and Freight Forwards 32* (January 1980) (Senate Report) (available at committee office, Tallahassee, Fl.) [hereinafter cited as Senate Report].

51. See *id.* at 40.

52. See *id.* at 33-35.

53.

Statistical Analysis of the Application Process

The first table below breaks down the applications for common carriers and the second table breaks down the applications for contract carriers.

DISPOSITION OF COMMON CARRIER
CERTIFICATE APPLICATIONS FOR 1974-1979

| | <u>1974-75</u> | <u>1975-76</u> | <u>1976-77</u> | <u>1977-78</u> | <u>1978-79</u> |
|-----------------------------------|----------------|----------------|----------------|----------------|----------------|
| Applications for New Authority | 47 | 41 | 56 | 117 | 165 |

B. Rates

In addition to regulation of entry, the PSC was authorized to

| | | | | | |
|--|-----------|-----------|-----------|------------|------------|
| Applications for Extended Authority | 47 | 35 | 28 | 26 | 49 |
| | — | — | — | — | — |
| TOTAL COMMON CARRIER CERTIFICATE APPLICATIONS FILED | 94 | 76 | 84 | 143 | 214 |
| Granted as filed | 47 (50%) | 42 (55%) | 39 (46%) | 54 (38%) | 94 (44%) |
| Granted with Modifications | 6 (6%) | 1 (1%) | 25 (30%) | 58 (41%) | 75 (35%) |
| Withdrawn | 14 (15%) | 14 (18%) | 6 (7%) | 19 (13%) | 33 (15%) |
| Denied | 27 (29%) | 19 (25%) | 14 (17%) | 12 (8%) | 12 (6%) |

Source: Public Service Commission

DISPOSITION OF CONTRACT CARRIER CERTIFICATE APPLICATIONS FOR 1974-1979

| | 1974-75 | 1975-76 | 1976-77 | 1977-78 | 1978-79 |
|--|-----------|-----------|-----------|-----------|-----------|
| Applications for New Authority | 14 | 9 | 11 | 23 | 30 |
| Applications for Extended Authority | 2 | 2 | 3 | 5 | 8 |
| | — | — | — | — | — |
| TOTAL CONTRACT CARRIER CERTIFICATE APPLICATIONS FILED | 16 | 11 | 14 | 28 | 38 |
| Granted as filed | 11 (69%) | 8 (73%) | 7 (50%) | 14 (50%) | 30 (79%) |
| Granted with Modifications | 0 | 1 (9%) | 1 (7%) | 10 (36%) | 4 (11%) |
| Withdrawn | 2 (13%) | 1 (9%) | 3 (21%) | 2 (7%) | 2 (5%) |
| Denied | 3 (19%) | 1 (9%) | 4 (29%) | 2 (7%) | 1 (3%) |

Source: Public Service Commission

As can be seen from the first table, slightly less than half, 47 percent, of the common carrier applications were granted as filed over the last five years. Applicants for contract carriage have a much better chance at receiving the operating authority requested. As shown by the second table, 64 percent of the contract carrier applications were granted as filed over the last five years.

It would be incorrect, however, to assume from these statistics that an applicant for a common carrier certificate has nearly a 50-50 chance of receiving the authority sought. One reason is that the tables do not separately break down the disposition of applications for *new* authority and *extended* authority. Applicants for new authority have a much more difficult time receiving the authority requested than do existing certificate holders seeking extended authority. A second reason why the statistics may be somewhat misleading is due to the "Silco applicants" who were "grandfathered" in. . . [D]ue to a 1975 court decision, [Petroleum Carrier Corp. v. Silco Petroleum Carrier, Inc., 312 So. 2d 457 (Fla. 1st Dist. Ct. App. 1975)] intracity carriers were no longer deemed to be exempt and therefore had to apply to the PSC for certificates. The Performance Audit prepared by the Office of the Auditor General [Florida Office of the Auditor General, Performance Audit of the State Program for Motor Carrier Regulation (Nov. 2, 1978)] reviewed the applications disposed of in 1977. The following table from this report distinguishes the applications by the type of applicant. The first row of the table shows the disposition of applications for persons not presently certified and who were not "Silco" applicants. Only 12.5 percent of these applications were granted as

regulate the rates charged by certified motor carriers.⁵⁴ The statutory authority provided in section 323.07, for rate regulation was very broad: "The commission may supervise and regulate every motor carrier in the state operating under the authority of this part, fix or approve the rates, fares, charges, classifications, rules and regulations for such motor carriers,"⁵⁵ In conjunction with this broad grant of rate authority, section 323.08, outlined the standards and procedures for fixing and changing rates for all but four types of carriers.⁵⁶ This section required all rates to be "just, reasonable and compensatory," for which the PSC was authorized to consider the "efficiency, sufficiency, and adequacy" of the facilities and equipment provided and services rendered, as well as the value of such services to the public.⁵⁷ However, no motor carrier could be denied reasonable earnings, as measured by intrastate revenues, expenses, operating ratio, and cost of capital.⁵⁸ In practice, the operating ratio which represented the ratio of operating costs to operating revenue, was the usual measure for reasonable earnings.⁵⁹ An operating ratio between ninety and ninety-five per-

requested (although 56.3 percent received some type of authority).

From Application Dockets Closed in 1977

| Status of Applicant | Disposition of Application | Granted as Requested | Partly Granted | Total COPCANS Granted | Denied | Withdrawn |
|--|----------------------------|----------------------|----------------|-----------------------|--------------|--------------|
| Non-certificated, Non-Silco Applicants | | 12.5% | 43.8% | 56.3% | 28.1% | 15.6% |
| Silco Applicants | | 10.7% | 78.6% | 89.3% | 0% | 10.7% |
| Certificate Holders | | 42.2% | 36.8% | 79.0% | 10.5% | 10.5% |
| Total | | 23.5% | 51.0% | 74.5% | 13.3% | 12.2% |

Source: Office of the Auditor General

The above information was taken from Senate Report, *supra* note 50, at 33-35.

54. See FLA. STAT. § 323.07 (1979) (repealed 1980).

55. *Id.*

56. The four types of carriers were (1) armored cars, (2) construction aggregate haulers, (3) charter buses, and (4) newspaper carriers. FLA. STAT. § 323.08(3)-(4) (1979) (repealed 1980).

57. *Id.* § 323.08(2)(b).

58. *Id.*

59. Florida Office of the Auditor General, Performance Audit of the State Program for Motor Carrier Regulation 81 (Nov. 2, 1978) [hereinafter cited as Auditor General Report].

cent was generally considered to be a reasonable level of earnings.⁶⁰

Pursuant to the procedures outlined in section 323.08, a carrier filed a proposed rate change with the PSC which it could suspend while a final order was pending; or the PSC could approve, disapprove or modify the proposal.⁶¹ The PSC applied this procedure only to "a general rate increase," defined by rule as "a proposal to change all or substantially all of the tariff provisions."⁶² A tariff was defined as the publication containing all of the individual fares and charges for transporting specific commodities at various distances and weights.⁶³ By rule the PSC outlined an abbreviated procedure for tariff filings that were not deemed to be general rate increases.⁶⁴

Although the statutes did not address the subject, rates were either filed by individual carriers or by rate bureaus.⁶⁵ Ten different rate bureaus filed rates on behalf of approximately seventy percent of the carriers which had rates on file with the PSC.⁶⁶ Pursuant to rule, all rate bureaus had to be approved by the PSC.⁶⁷ The rate bureau would hold hearings for any tariff proposal, sending notice to all members and interested parties. If a proposal was adopted, it was sent to the PSC for consideration and, if approved, it would be thereafter followed by all members of the rate bureau. A bureau member also had the right to take "independent action" if he desired to use a different tariff from that of the bureau. However, notice of this intention had to be made to the bureau and to each of the members.⁶⁸

60. *Id.*

61. FLA. STAT. § 323.08 (1979). The PSC had 30 days within which to suspend the proposed rate. If the PSC did nothing within this 30-day period, the new rates automatically went into effect. If the PSC did suspend the rate change, it had up to eight months within which to issue a final order, or else the new rates could be placed into effect under bond. At a later date the PSC could order a refund of any rates charged that were found not to be unjustified. No statutory time limit was placed on this final order. *Id.*

62. FLA. ADMIN. CODE RS. 25-5.130(3), .131.

63. *Id.* at 25-5.130(2).

64. *See id.* at 25-5.138. The proposed tariff had to be submitted 30 days prior to its effective date, and anyone wishing to protest had to do so at least 12 days prior to its effective date. If no action was taken by the PSC the rate automatically went into effect after 30 days. *Id.* at 25-5.138 § 2. If the PSC suspended the tariff, a final order had to be issued within seven months; otherwise the tariff filing went into effect at the end of the period. *Id.* at 25-5.138(4)(b).

65. Senate Report, *supra* note 50, at 53.

66. *Id.*

67. FLA. ADMIN. CODE R. 25-5.132.

68. *Id.* at 25-5.133.

The PSC strongly encouraged carriers to join rate bureaus.⁶⁹ In 1978, however, the PSC began a neutral policy on rate bureau membership, complying with an Attorney General Opinion which stated that the rules authorizing rate filing by bureaus were valid only to the extent that the rules did not limit the unrestrained right of motor carriers to submit individual tariff filings.⁷⁰ The opinion also stated that rate bureaus were not immune from the state antitrust law,⁷¹ chapter 542, Florida Statutes.⁷²

Statistics on PSC disposition of rate requests in recent years indicate that practically every tariff filing became effective without PSC action or ultimately became effective after an initial suspension.⁷³

C. Safety

Sections 323.07 and 323.13, Florida Statutes, granted the PSC broad safety authority over carriers operating under certificates or permits,⁷⁴ in addition to requiring certain safety equipment.⁷⁵ With certain minor exceptions, the PSC adopted by reference the safety standards for construction, maintenance, and operation of motor vehicles prescribed by the Federal Department of Transportation.⁷⁶ These federal rules are quite comprehensive, dealing with driver qualifications, driver condition while operating the vehicle, required safety equipment, reporting and recording requirements for accidents, hours of service or drivers, inspection, repair and maintenance of the vehicles, and transportation of hazardous materials.⁷⁷

69. Auditor General Report, *supra* note 59, at 83.

70. 78-53 OP. ATT'Y GEN. 1, 5 (March 28, 1978).

71. *Id.* at 16.

72. (1979).

73. See Senate Report, *supra* note 50, at 57. Of the 1200 tariff filings from January, 1978, to October, 1979, 1184 became effective without PSC action and four more ultimately became effective after an initial suspension. *Id.* at 56. Only five filings were ordered cancelled, two were withdrawn, and one was pending. From January, 1978, through December 15, 1979, 45 additional filings were deemed to be general rate requests. Of these, 10 became effective without PSC action and seven were granted after a hearing. Only four were rejected as improper and three were withdrawn. The remaining 21 filings were pending as of December 15, 1979. *Id.* at 55-56.

74. FLA. STAT. § 323.07 (1979).

75. *Id.* at § 323.13. "The commission may prescribe and require as standard on all vehicles operated by motor carriers under its permits or certificates all necessary safety devices" *Id.*

76. See FLA. ADMIN. CODE R. 25-5.110 (adopting 49 C.F.R. §§ 390-97 (1975) (with exceptions)).

77. See 49 C.F.R. §§ 390-97 (1975).

Safety regulations were enforced by seventy-two investigators hired by the PSC who were armed, uniformed and vested with the powers of deputy sheriffs to stop any vehicle on the highway to check and inspect the vehicle and any related documents.⁷⁸ The investigators had the power to make arrests and to issue citations to appear before the PSC.⁷⁹ Enforcement of PSC regulations was accomplished through check points, patrols, and temporary blockades.⁸⁰ If a violation were found, the driver found to be in violation could be arrested, issued a citation to appear before the PSC, issued a warning requiring the defect to be corrected, or the vehicle could be placed out of service.⁸¹ Much of the enforcement activity involved a verification of a carrier's authority rather than safety.⁸² Of the 5,339 arrests made in 1978, 2,313 were made for operating without proper authority.⁸³

D. Other Areas of Regulation

In addition to the regulation of entry, rates, and safety, chapter 323 imposed other types of regulation on motor carriers. Carriers were subject to a road tax which imposed an annual flat fee per vehicle.⁸⁴ Also, the chapter required the PSC to fix bond or insurance requirements for the protection of the passengers and freight carried in the vehicle, and for the protection of the public against injury caused by the negligent operation of the vehicle.⁸⁵

78. Senate Report, *supra* note 50, at 63.

79. FLA. STAT. § 323.21 (1979) (repealed 1980).

80. Senate Report, *supra* note 50, at 63.

81. *Id.*

82. *Id.* at 64.

83. *Id.*

84. FLA. STAT. § 323.15 (1979) (repealed 1980). The forerunner of the road tax was the mileage tax which was replaced in 1965 with the road tax in order to decrease administrative and compliance costs. See Florida Senate Ways and Means Committee, Florida Tax Handbook 1979 33 (March 1979) (available in committee office, Tallahassee, Fl.). Approximately \$2.6 million was collected under this tax in fiscal year 1978-79. Senate Report, *supra* note 50, at 65. After an initial 4% of the funds collected were deposited in general revenue, 63% were deposited in the Revenue Sharing Fund for counties, FLA. STAT. § 215.20 (1979), 35% in the Florida Public Service Regulatory Trust Fund, and 2% in the Revenue Sharing Fund for municipalities. *Id.* § 323.16 (1979) (repealed 1980).

85. FLA. STAT. § 323.06 (1979) (repealed 1980). By rule, the commission set liability insurance requirements of \$100,000 for bodily injury to one person, \$300,000 for bodily injury to all persons in one accident, and \$50,000 for physical damage liability excluding cargo. Cargo damage liability insurance was required in the amount of \$2500 for cargo carried by one vehicle and \$5000 for one occurrence. Busses of thirteen passenger capacity or more were required to carry \$100,000/\$500,000 bodily injury liability coverage and \$50,000 physical damage liability coverage. FLA. ADMIN. CODE R. 2-5.31(4).

In addition to the regulation of motor carriers themselves, chapter 323 authorized the PSC to regulate two other related professions—transportation brokers⁸⁶ and freight forwarders.⁸⁷ A transportation broker is one who finds transportation services for a shipper⁸⁸ and was required to be licensed by the PSC. A freight forwarder assembles small shipments of cargo and arranges for its transportation in truckload quantities.⁸⁹ Persons desiring to be freight forwarders were required to obtain a certificate of authority also.⁹⁰

E. Exemptions

Certain types of motor carriers were completely exempt from regulation by the PSC.⁹¹ In other words, the PSC had no control over the entry, rates, safety or other aspects of these carriers' operations.

The 1931 act contained a list of exempt carriers which was preceded by the following phrase: "transportation exempted in this section is casual, seasonal and not on regular routes or schedules, is slow moving, frequently in special equipment, and for compara-

86. See FLA. STAT. § 323.31 (1979) (repealed 1980).

87. See *id.* § 323.51-68.

88. *Id.* § 323.31(1) (1979) (repealed 1980). An applicant was required to show that issuance of a license would be consistent with the public convenience and necessity, for which the PSC was required to consider the effect the proposed service would have upon transportation brokerage as a whole within the area sought to be served. *Id.* § 323.31(2). In addition, the applicant was required to meet the following qualifications:

1. He has had a minimum of 1 year experience in the office of a licensed transportation broker or 1 year of experience as a truck owner or driver in the field of motor transportation.

2. He has not been convicted of engaging in the business of transportation brokerage without a proper license in the past 12 months; and no legal proceedings are pending against him for violation of this section.

3. He has not been engaged as the owner, partner, officer, or director of a predecessor company operating as a transportation broker within the past 12 months which has become insolvent, been adjudged as bankrupt, or has unsatisfied judgments against it.

4. He has attached to his application as a part thereof a current financial statement prepared and signed by a certified public accountant showing a minimum net worth of \$5,000 and adequate financial means to operate successfully as a transportation broker.

Id. § 323.31(3)(a).

89. *Id.* § 323.52(1).

90. *Id.* § 323.54(1). Again the standard was public convenience and necessity, for which the PSC was required to consider the public need for the service, the ability and financial responsibility of the applicant, and the effect the proposed service would have upon existing transportation services. *Id.* § 323.54(5).

91. *Id.* § 323.29.

tively short distances over the improved highways of the State."⁹² This statutory expression of the intent to exempt certain vehicles from regulation remained unchanged until 1977 when it was amended simply to read, "the following transportation shall not be subject to the requirements of chapter 323."⁹³ The legislature apparently realized that no common characteristic existed among the diversified exemptions.

Exemptions from regulation in the 1931 act that were maintained throughout the history of the law (with certain modifications) included (1) school busses, (2) transportation of agricultural and horticultural goods, seafood, dairy products, logs, and lumber from the point of production to the point of primary manufacture or assemblage; or from the point of production, primary manufacture, or assemblage to a shipping point, (3) privately owned motor vehicles carrying the owner's or operator's goods, and (4) motor vehicles operating within the limits of any city or town and the adjoining suburban territory, where the transportation was regulated by the city or town.⁹⁴

The intra-municipal exemption was significantly limited in 1975 in *Petroleum Carrier Corp. v. Silco Petroleum Carrier, Inc.*⁹⁵ The court interpreted the language in the statutory exemption for intra-municipal transportation "*where such business of carriage is regulated by the legislative body of such cities or towns.*"⁹⁶ Looking at the purpose of the act, the court concluded that the mere adoption of safety standards by a city did not constitute regulation of the "*business of carriage*" contemplated by the exemption.⁹⁷ The opinion implied that full regulation of entry under the standards of chapter 323 was required.⁹⁸ As a result of this case, those

92. Act of June 15, 1931, ch. 14764, § 30, 1931 Fla. Laws 486.

93. Act of June 30, 1977, ch. 77-434, § 20, 1977 Fla. Laws 1767.

94. See Act of June 15, 1931, ch. 14764, §§ 30-31, 1931 Fla. Laws 486, which is similar to FLA. STAT. § 323.29(1)-(3), (5) (1979) (repealed 1980).

95. 312 So. 2d 457 (Fla. 1st Dist. Ct. App. 1975).

96. *Id.* at 459 (emphasis in original).

97. *Id.* at 460 (emphasis in original).

98. *Id.* at 461. The opinion stated:

Appellee contends that regulation of petroleum carriers in the City of Jacksonville, other than as to safety is unnecessary; that if the checks and balances of competition in Jacksonville between the various independent carriers is such that the general public is well served, there is no need to require regulation. This contention that open competition between carriers (or certain types of carriers) is good and should be allowed is a philosophical one that flies in the face of the Motor Carrier Act and should be addressed to the legislature rather than to the court.

intra-municipal carriers previously deemed exempt were now required to obtain certificates of public convenience and necessity. The PSC treated the operations of existing carriers as evidence of public convenience and necessity and, in effect, "grandfathered in" those carriers.⁹⁹

By the time of the 1980 repeal, the list of exempt carriers had grown significantly. In addition to the four types of carriers already mentioned, the following types of transportation (with certain technical distinctions not mentioned) were included: (1) motor vehicles used exclusively in transporting agricultural or horticultural products directly to the consumers or growers, (2) motor vehicles used exclusively in transporting ice for use in the packing of agricultural or horticultural commodities for further shipment, (3) hearses and ambulances, (4) wreckers, (5) motor vehicles operated by a manufacturer's dealer to transport heavy equipment to and from his own garage and repair shops at the request of the owner, (6) U.S. mail trucks, and (7) dump trucks of a ten-ton capacity or less.¹⁰⁰

IV. LEGISLATIVE HISTORY OF 1980 DEREGULATION

A. Background

By providing for the automatic repeal of chapter 323, the Regulatory Reform Act of 1976 guaranteed a review of the need for motor carrier regulation. This review was performed by the legislature with the aid of other governmental agencies.

One of the most comprehensive studies used by the legislature in evaluating motor carrier regulation was the performance audit of motor carrier regulation issued on November 2, 1978, by the Florida Office of the Auditor General.¹⁰¹ This audit generally concluded that economic regulation of some segments of the industry was unnecessary to safeguard the public's health, safety, and welfare.¹⁰² The only type of carriers for which regulation might be necessary were the "less-than-truckload" (LTL) carriers operating between commercial zones.¹⁰³ In regard to rate regulation, the audit con-

99. Auditor General Report, *supra* note 59, at 46.

100. FLA. STAT. § 323.29 (4), (6)-(13) (1979) (repealed 1980).

101. See Auditor General Report, note 59 *supra*.

102. See *id.* at 13, 34-38.

103. *Id.* at 35. This conclusion was based on the fact that LTL carriers have some of the classical characteristics of a public utility. For example, large initial capital investment in fixed assets, such as terminals, limits entry and makes it inefficient for two carriers to operate in a given area. In addition, unlike truckload shippers who may be able to buy or lease

cluded that the public bore unnecessary costs in the form of state-sanctioned cartel pricing caused by regulation of those segments of the industry that were naturally competitive and better left to the control of the free market.¹⁰⁴

The PSC also reviewed the regulation of motor carriers and submitted its recommendations to the legislature in the form of a suggested bill, the first draft of which was completed on November 19, 1979, and submitted to the legislature on December 7, 1979.¹⁰⁵ The PSC made the following major recommendations regarding entry: (1) delete the statutory language which prohibited the granting of a certificate unless the PSC determined that existing carriers are not providing adequate services, (2) place the burden on a proponent to prove that the granting of a certificate would adversely affect existing service, (3) establish "general principles" in the statute listing the type of restrictions which should not be forced on carriers' operations, and (4) eliminate the requirement that a passenger carrier have regular route service before it may obtain charter bus authority.¹⁰⁶ In regard to the regulation of rates, the commissioners recommended that they be authorized to adopt a "zone of reasonableness" approach to rate setting.¹⁰⁷ Under this approach, the PSC would set minimum and maximum rates within which carriers could set their own rates. It was also recommended

trucks, the public does not have alternative means of transport. *Id.* at 30. Thus, a monopoly situation would result for LTL shippers in the absence of regulation. *Id.* at 30-31. For these carriers, the audit recommended that the entry process place greater weight on a carrier's ability to operate efficiently and to provide convenient transportation services, and that the burden be placed on presently certified carriers to prove their injury if an application were granted. *Id.* at 58-60.

104. *Id.* at 13, 93.

105. Letter from Robert T. Mann, Chairman of the PSC to Phillip D. Lewis, President of the Florida Senate (Dec. 7, 1979) (on file with Fla. S. Committee on Commerce, Tallahassee, Fl.). The nine bills referenced in Chairman Mann's letter refer to all of the PSC functions under sunset review for 1980. Chapter 323 was one of the nine topics. See Suggested PSC draft legislation (Nov. 19, 1979) (available at Fla. S. Committee on Commerce Office) [hereinafter cited as PSC draft legislation].

Although the PSC revised its proposed bill several times, the basic recommendations remained unchanged. While it was represented that the recommendations were from the five commissioners as a group, Chairman Robert Mann made it clear that his personal preference was for a much larger scale deregulation than that offered by the suggested bill. Fla. S. Committee on Commerce, tape recording of proceedings (Oct. 15, 1979) (on file with committee) (comments by Robert Mann, Chairman of the PSC). The PSC advocated legislative changes, unlike the Office of the Auditor General which presented its findings and recommendations without making any affirmative attempt to "lobby" the legislature. See generally Auditor General Report, *supra* note 59, at iii.

106. PSC draft legislation, *supra* note 105, at 14-25.

107. *Id.* at 44.

that rate bureaus be expressly authorized and be exempted from the state antitrust law.¹⁰⁸ Concerning safety, the PSC recommended that its authority to regulate safety be expanded to include carriers currently listed as exempt from all PSC regulation.¹⁰⁹

B. The Senate

On the Senate side of the Florida legislature, the Office of the Senate President directed the Senate Commerce Committee to perform sunset review of chapter 323.¹¹⁰ Between September 10, 1979 and March 12, 1980, the Senate Commerce Committee, chaired by Senator W. D. Childers, held six meetings exclusively on the subject of motor carrier regulation.¹¹¹ The staff of the Senate Commerce Committee began studying the subject in the summer of 1979 and issued a staff report in January, 1980.¹¹² The staff report's recommendations included (1) eliminating demonstrated need for the applicant's service as a relevant factor upon entry,¹¹³ (2) providing a statutory list of prohibited operating restrictions,¹¹⁴ (3) removing the restriction imposed upon passenger carriers requiring that regular route authority be a prerequisite to obtaining charter authority,¹¹⁵ (4) prohibiting rate bureaus¹¹⁶ and (5) exempting various types of carriers, including contract carriers and single vehicles weighing less than 10,000 pounds.¹¹⁷

The first four meetings of the Senate Commerce Committee were devoted entirely to public testimony. Representatives of the trucking and shipping industry took advantage of this, particularly at the meeting of February 18, 1980. At that meeting, fourteen representatives of trucking companies and businesses that used their services testified in favor of continued regulation, (as compared to one representative of a tour bus operation who complained of re-

108. *Id.* at 42.

109. *Id.* at 41, 68.

110. Memorandum from Howard Walton of the Office of the Florida Senate President to Fred Martin, Staff Director of the Fla. S. Committee on Commerce (June 25, 1979).

111. Senate Commerce Committee meetings on motor carrier regulation were held on September 10 & October 15, 1979; January 8, February 18-19 & March 12, 1980. Fla. S. Committee on Commerce, committee reports for these dates (on file with committee).

112. *See* Senate Report, note 50 *supra*.

113. *Id.* at 37.

114. *Id.* at 43.

115. *Id.* at 50.

116. *Id.* at 58.

117. *Id.* at 62.

strictive regulations, one man who complained of the PSC's delay in acting upon his application for a certificate and a representative of Common Cause who supported major regulatory reform).¹¹⁸

On February 19, 1980, the Senate Commerce Committee went through an issue outline prepared by staff, and voted on the concepts that it wished to be placed in a proposed committee bill.¹¹⁹ Several major reforms were decided upon at this stage. Although the committee deleted certain key provisions when presented with the staff prepared bill reflecting the committee's original reforms,¹²⁰ the final committee bill did contain a number of important changes. These included removal of the primary barrier to obtaining charter bus authority, placement of certain burdens of proof on protestants to an application, and authorization of the PSC to use "zone of reasonableness" rating.¹²¹ The bill was passed

118. Fla. S., Committee on Commerce, tape recording of proceedings (Feb. 18-19, 1980) (on file with committee). At each of the first four meetings the PSC's suggestions were presented by Pat Wiggins of the PSC's General Counsel's Office, with additional comments made by Commissioners Robert Mann, chairman, and Joseph Cresee. *See id.* (Sept. 10, 1979; Oct. 15, 1979; Jan. 8, 1980; Feb. 18-19, 1980 & March 12, 1980) (on file with the committee). The findings and recommendations of the Auditor General Report were presented at the first meeting by its author, Edward Tempest. *Id.* (Sept. 10, 1979).

119. *Id.* (Feb. 18-19, 1980).

120. Fla. SB 345 (1980).

121. Regarding the allowance of entry through the granting of a certificate, the committee originally voted, in concept, to (1) place the burden on a protestant to prove that its business would be adversely affected, (2) eliminate the requirement that the PSC first determine that existing service is inadequate prior to granting a certificate (but keeping the need for service as relevant), (3) provide "general principles" to guide but not bind the PSC in avoiding unreasonable operating restrictions, and (4) eliminate the requirement that a passenger carrier have regular route authority in order to obtain charter authority. *Id.* (Voting "in concept" occurs when the committee has no formal legislation before it. Instead, votes are taken merely on ideas or "concepts" which the committee endorses). However, when the committee was presented with the staff prepared bill containing these entry reforms, Fla. SB 345 (1980), the committee amended the bill to remove the second and third reforms listed above, but retained the two reforms relating to the burden of proof and charter authority. Fla. S. Committee on Commerce, committee report (March 12, 1980) (on file with committee). The changes were incorporated into Fla. SB 345 to make Fla. CS for SB 345 (1980).

In regard to rate regulation, the committee retained the original "concept" votes to (1) authorize the PSC to set minimum and maximum rates for any type of motor carrier and (2) to expressly authorize the filing of rates by rate bureaus and exempt them from the state antitrust law. *Id.* § 12. The committee also added some carriers to the existing list of exemptions, but eliminated one from the list. *Id.* § 28. The bill eliminated the exemption for intramunicipal carriage. It added exemptions for the five types of carriers which were permitted as a matter of right: taxicabs, transportation under contract with the United States government, transportation incidental to a person's primary business of repair or installation, transportation of houses formerly attached to realty and transportation of livestock, seafood and agricultural products. The bill also added exemptions for transportation of newspapers which was then exempt only from rate regulation. Additional exemptions were added for

unanimously by the committee and officially reported out of committee on March 17, 1980 as Florida Committee Substitute for Senate Bill 345 (CS for SB 345).¹²²

When CS for SB 345 reached the floor of the Senate on April 9, 1980, the full Senate, "defying all predictions" in the words of one newspaper report,¹²³ passed many amendments to the bill, which resulted in subjecting the trucking industry to increased competition. The first surprise to the lobbyists and the media, if not to the Senate membership, was an amendment offered by nineteen senators, which completely exempted passenger carriers from PSC regulation except for the requirement of obtaining a permit from the PSC, issued "upon a demonstration that the carrier can provide safe transportation, and that the carrier is fit to operate as a business affected with the public interest."¹²⁴

The most dramatic moment, however, occurred when an amendment was offered which made the fitness and financial ability of an applicant the only relevant criteria for the granting of an operating certificate for all types of motor carriers. The amendment struck language in the statute relating to the need for the proposed service and the effect on existing transportation and, in particular, struck the language which required a PSC determination of present inadequacy of service. The amendment passed by one vote.¹²⁵

The passage of the amendment cleared the way for many others. Twenty-three other amendments were subsequently adopted.¹²⁶ Another important amendment prohibited the filing of rates by rate bureaus and changed the rate regulation procedure from a "prior approval" to a "use and file" basis.¹²⁷ Another significant amendment was passed transferring safety jurisdiction from the PSC to the Florida Department of Highway Safety and Motor Ve-

transportation of lost or misplaced baggage, drive-away automobiles, car-pools, mass transit, horse carriers and federally funded social service transportation.

122. Florida Legislature, History of Legislation, 1980 Regular Session, Senate Bill Actions Report at 100.

123. "Senate Stunner Lifts Regulations on Truck Firms," Florida Times Union, Apr. 10, 1980, at 1, col. 4.

124. See FLA. S. JOUR. 85 (Reg. Sess. 1980) (amendments 9, 9A and 10 for Fla. CS for SB 345).

125. See *id.* (amendment 11 for Fla. CS for SB 345). The amendment was moved by Senator Kenneth (Buddy) MacKay.

126. FLA. S. JOUR. 84-88 (Reg. Sess. 1980).

127. *Id.* at 86 (amendment 12 to Fla. CS for SB 345). The "prior approval" rate procedure in ch. 323 required PSC approval (or a passage of time without PSC action) prior to any rate change. Under the "use and file" amendment, rates could be changed without PSC approval; however, the PSC could require a rate change at a later date.

hicles.¹²⁸ CS for SB 345, as amended, was passed by the Senate, twenty-nine to seven.¹²⁹

C. The House of Representatives

While the Senate passed its motor carrier bill, the Florida House of Representatives was working on its own bill. The Florida House Regulatory Reform Committee, chaired by Representative George Sheldon, reviewed the regulation of motor carriers. Under Representative Sheldon's direction the committee invited various transportation experts to speak at its early meetings.¹³⁰ Five meetings held by the Regulatory Reform Committee in March and April, 1980, were devoted solely to expert and public testimony on transportation regulation.¹³¹

128. *Id.* at 87 (amendments 22-24 to Fla. CS for SB 345).

129. *Id.* at 88.

130. At its first two meetings on September 20 and 21, 1979, the committee was addressed by Dr. James Miller III, co-director for the Study of Government Regulations at the American Enterprise Institute; Dr. Milton Kafoglis, economics professor at Emory University; Dan Klein, director of planning, Eastern Airlines; and Jack Pearce, transportation attorney from Washington, D.C. Fla. H.R., Committee on Regulatory Reform, committee reports (Sept. 20-21, 1979) (on file with committee). "Local" speakers included Ed Tempest of the Florida Office of the Auditor General, and Ernie Litz of the Department of Public Administration at Florida State University who prepared for the committee a study of Florida's regulation of motor carriers which was submitted on July 24, 1979. E. Litz, *Florida's Regulation of Surface Transportation: A Study of Issues* (July 24, 1980) (available at the Fla. H.R. Committee on Regulatory Reform, Tallahassee, Fl.). This report is descriptive in nature and does not contain conclusions or recommendations. Dr. Miller, Dr. Kafoglis, and Jack Pearce all strongly advocated substantial reduction of regulation in the trucking industry. Fla. H.R., Committee on Regulatory Reform, tape recording of proceedings (Sept. 20-21, 1979) (on file with committee). The committee was also shown three video tapes examining the trucking deregulation question. *Id.*

131. The committee reports of the Florida House of Representatives Committee on Regulatory Reform reflect testimony from the following persons:

March 17, 1980—Bill Bryant, Chief Antitrust Section, Florida Department of Legal Affairs

Elliott Gerden, Chief, Transportation Section, Antitrust Division, United States Department of Justice

Jim Wharton, Attorney representing the Florida Intrastate Rate Bureau

Mark Brookshire, Chief, Traffic Bureau, Florida Intrastate Rate Bureau

March 18, 1980—Dan Kaplan, Chief, Policy Analysis Division, Civil Aeronautics Board

Pat Wiggins, General Counsel's Office, Florida Public Service Commission

Jack Shreve, Florida Public Counsel

April 7, 1980—29 appearance cards filed by representatives of the trucking industry and shippers who use its services.

Meetings on transportation regulation were also held on April 16 and April 21, 1980 (on file

A proposed committee bill was prepared by the committee staff under the direction of chairman George Sheldon.¹³² The proposal was presented to the committee and discussed on April 29, 1980, amended and adopted on April 30, 1980.¹³³ The proposed committee bill was officially introduced as Florida House Bill 1635 (HB 1635)¹³⁴ and referred to the Florida House of Representatives Committee on Appropriations.¹³⁵ HB 1635 was a complete rewrite of chapter 323, entitled the "Motor Carrier Reform and Safety Act of 1980."¹³⁶ The bill provided for the granting of "certificates of fitness and safety" to any person found by the PSC to be fit, willing and able to provide the service authorized and to comply with the chapter's safety requirements and any rule promulgated pursuant thereto.¹³⁷ The only operating restrictions which could be administratively placed on a carrier were those necessary or proper to insure the vehicle's safe operation and which were consistent with the transportation policy set forth in the bill.¹³⁸ The bill also provided for complete deregulation of passenger rates immediately upon becoming law and of freight rates on January 1, 1982; until that date, the PSC was required to establish a "zone of reasonableness" rating.¹³⁹ Rate bureaus were expressly made subject to the state antitrust law.¹⁴⁰ The PSC's safety jurisdiction was expanded to cover all commercial vehicles, including those otherwise exempt from PSC regulation.¹⁴¹ Practically all of the exemptions from regulation added by CS for HB 345 were also exempted in HB 1635; in addition, HB 1635 exempted vehicles weighing less than 10,000 pounds, unless transporting hazardous materials.¹⁴² The bill also provided a \$50,000 civil penalty, as well as treble damages, against motor carriers engaged in certain anticompetitive and discrimina-

with committee).

132. See Proposed Committee Bill relating to ch. 323 (available at Fla. H.R. Committee on Regulatory Reform, Tallahassee, Fl.).

133. Fla. H.R., Committee on Regulatory Reform, tape recording of proceedings (April 29-30, 1980).

134. Fla. HB 1635 (1980).

135. Florida Legislature, History of Legislation, 1980 Regular Session, House Bill Actions Report at 369.

136. Fla. HB 1635, § 1 (1980).

137. *Id.* at 11.

138. *Id.* at 13-14.

139. *Id.* at 15-17.

140. *Id.* at 17.

141. *Id.* at 18-19.

142. *Id.*

tory practices.¹⁴³ The House Regulatory Reform Committee passed the bill by a vote of seventeen to one.¹⁴⁴

On May 7, 1980, the Appropriations Committee passed a committee substitute for HB 1635 (CS for HB 1635), which incorporated several amendments into the bill.¹⁴⁵ One of the amendments made domicile in Florida a requirement for obtaining an operating certificate. (In the case of a corporate applicant, domicile simply meant registration with the Department of State.)¹⁴⁶ Another amendment removed the section which provided a \$50,000 penalty and treble damages against carriers engaged in certain anticompetitive and discriminatory practices.¹⁴⁷ Otherwise, the committee substitute was nearly identical to the original bill and contained all of the reforms previously mentioned.

The House of Representatives acted on CS for HB 1635 on May 8 and 9, 1980.¹⁴⁸ At this time the House also had available for action the Senate's motor carrier bill, CS for SB 345, and had the option of passing that bill and sending it to the Governor for approval, or amending it and sending it back to the Senate.¹⁴⁹ However, the House chose to proceed with CS for HB 1635.¹⁵⁰ The most significant amendment that was adopted on the floor provided for complete deregulation of all rates on January 1, 1981, one year previous to the date provided in the original bill.¹⁵¹ Between the three month period from July 1 to September 31, 1980, rates could be raised or lowered as much as fifteen percent without PSC approval. For the following three months, October 1 to December 31, 1980, rates could be changed an additional fifteen percent without PSC approval.¹⁵² All of the other previously mentioned reforms remained intact, and on May 9, the House passed CS for HB 1635 by a vote of ninety to twelve.¹⁵³

143. *Id.* at 21-23.

144. Fla. H.R., Committee on Regulatory Reform, committee report (April 30, 1980) (vote sheet on Fla. HB 1635) (on file with committee).

145. Fla. H.R., Committee on Appropriations, committee report (May 7, 1980) (on file with committee).

146. *Id.* (amendment 12 to Fla. HB 1635).

147. *Id.* (amendment 7 to Fla. HB 1635).

148. Florida Legislature, History of Legislation, 1980 Regular Session, House Bill Actions Report at 369.

149. *Id.*, Senate Bill Actions Report at 100.

150. *Id.*, House Bill Actions Report at 369.

151. FLA. H.R. JOUR. 368 (Reg. Sess. 1980) (amendment 1 to Fla. CS for HB 1635).

152. *Id.*

153. *Id.* at 408.

D. *The Compromise That Never Happened*

At the time, it seemed likely that the Senate and House would come together on a motor carrier bill. Both houses passed major reform measures which were substantially similar in the important area of entry, both generally making the fitness of the applicant the only relevant factor. Additionally, both bills came close to total deregulation of passenger carriers, and both subjected rate bureaus to the state antitrust law. However, there were significant differences in two major areas—rates and safety. While the House provided for eventual deregulation of rates, the Senate bill maintained rate regulation on a post-approval basis. Opposing positions were also taken regarding safety, with the House bill expanding the PSC's jurisdiction over previously exempted carriers and the Senate bill transferring safety to the Department of Highway Safety and Motor Vehicles. There were other differences to be sure, but these two appeared to be the most important.

Prior to further legislative action on the two Senate and House bills, Senator Kenneth (Buddy) MacKay held a number of informal meetings with interested parties in an attempt to arrive at a compromise satisfactory to both houses.¹⁵⁴ The staffs of both the Senate Commerce Committee and the House Regulatory Reform Committee were present throughout these "negotiations." It was decided that CS for HB 1635 would be the working model. The compromise proposal retained the entry requirements in the House bill, but added a restriction relating to prior convictions of the applicant. A new rate regulation proposal distinguished between truckload (TL) rates and less than truckload (LTL) rates, immediately deregulating the former and phasing out regulation of the latter.¹⁵⁵

154. After CS for HB 1635 was passed by the House, it was sent to the Senate and referred to the Commerce Committee. Florida Legislature, History of Legislation, 1980 Regular Session, House Bill Actions Report at 369. About one week later, the Senate formally requested the return of its bill, CS for SB 345, which was still in the House. *Id.*, Senate Bill Actions Report at 100. This request was complied with two days later, and CS for SB 345 was returned and also referred to the Commerce Committee. *Id.*

155. Suggested Amendment to Fla. CS for HB 1635 (available at Fla. S. Committee on Commerce, Tallahassee, Fl.). The proposal retained the entry provisions of the House bill by which an applicant had to be "fit, willing, and able" and be domiciled in Florida. *Id.* at 8. As in the House bill, domicile for a corporation simply meant registration with Secretary of State, but the new proposal waived the domicile requirement for an applicant from a state which had entry requirements more restrictive than Florida's. *Id.* at 10. A new entry restriction added by the proposal authorized the PSC to deny an application of anyone convicted of certain crimes within the previous seven years. *Id.* at 9. A new rate section was written distinguishing between truckload (TL) rates and less than truckload (LTL) rates. *Id.* at 13.

On May 26, 1980, the Senate Commerce Committee considered CS for HB 1635, and Senator MacKay offered his proposal as an amendment to the House bill.¹⁵⁶ At this meeting and the following meeting on June 2, the Commerce Committee approved the compromise proposal, but added further amendments. The rate section remained intact, but entry and safety provisions were significantly altered. For entry, the proposal was amended to make the domicile requirement significantly stronger. While the compromise version had required a corporate applicant to be registered to do business in Florida, the amended version required a corporate applicant to be incorporated in, and have its principal place of business in Florida. As to safety, the committee voted to transfer the PSC's safety jurisdiction to the Florida Highway Patrol. Existing PSC investigators would be transferred to the Department of Transportation to enforce weight laws.¹⁵⁷

With the exception of one minor amendment, the full Senate passed the Commerce Committee's amended version of CS for HB 1635 on June 4, 1980, by a unanimous vote of the members present.¹⁵⁸ An amendment offered by Senators Kenneth Myers and MacKay to retain safety jurisdiction with the PSC failed by a vote of eleven to twenty-five.¹⁵⁹

The House refused to concur in the Senate amendments and requested the Senate to either recede from their amendments or to appoint a conference committee. The Senate refused to recede and a conference committee was appointed on June 5. This was the

TL rates and passenger rates would be deregulated immediately. LTL rates would be deregulated after eighteen months, and be allowed to increase 15% during the first six months, and another 30% during the following twelve months without PSC approval. However, one important restriction remained for both TL and LTL freight rates: all rate changes had to be filed with the PSC ten days before they were to become effective and only the rate on file could be changed. This requirement would continue indefinitely, even though the PSC would lose its authority to regulate rates. Concerning safety, the proposal expanded the PSC's jurisdiction to regulate the safety of all motor carriers, except privately owned vehicles carrying the owner's goods. *Id.* at 7. However, by the time the proposal was offered at the Senate Commerce Committee, Senator MacKay offered to return the PSC's safety authority to its existing status, regulating the safety of motor carriers other than those listed as exempt from all PSC regulation. Fla. S., Committee on Commerce, tape recording of proceedings (May 26-June 2, 1980) (on file with committee) (discussion by Senator MacKay).

156. *Id.* (May 26, 1980).

157. Fla. S., Committee on Commerce, committee reports (May 26 & June 2, 1980) (on file with committee).

158. Florida Legislature, History of Legislation, 1980 Regular Session, House Bill Actions Report at 369.

159. FLA. S. JOUR. 666 (Reg. Sess. 1980).

final action on CS for HB 1635, as the House failed to appoint a conference committee and, apparently, made the decision to allow chapter 323 to "sunset" on July 1, 1980.¹⁶⁰

Senate President Phillip Lewis and House Speaker Hyatt Brown called the legislature into special session on June 9, but the call did not include motor carrier regulation.¹⁶¹ However, on June 10, Governor Robert Graham formally advised the legislature that "motor vehicle safety" was to be included in the special session.¹⁶² Senate Bill 15-D, proposed by Senator Holloway and others, was passed by both houses on the final day of the special session.¹⁶³ This bill transferred the PSC's Transportation Enforcement Section, including its seventy-two investigators, to the Bureau of Weights within the Department of Transportation.¹⁶⁴ The inspectors were given the authority to enforce weight, load and safety laws.¹⁶⁵ Senate bill 15-D was signed by Governor Graham¹⁶⁶ and became law on July 1, 1980.¹⁶⁷

Probably no one person can fully explain why the Senate and the House could not reach an agreement on a trucking bill. Clearly, the failure of the House to respond to the Senate's final amended version of CS for HB 1635 indicated that the bill was unacceptable to the majority of its House members and its leadership, and that complete deregulation was viewed as preferable. One objectionable provision was believed to be the requirement that carriers indefinitely file rates with the PSC, even though rate approval itself was phased out. Some viewed this as a legal means of "price signaling" among carriers in addition to being an unnecessary requirement. The strict residency requirement was also thought to be disfavored, although many persons were of the opinion that it would be declared by the courts to be an unconstitutional burden on interstate commerce. For whatever reasons, no bill passed reenacting chapter 323, and the Regulatory Reform Act claimed its most important victim.

160. Florida Legislature, History of Legislation, 1980 Regular Session, House Bill Actions Report at 369.

161. FLA. S. JOUR. 1 (Spec. Sess. D. June 9, 1980).

162. *Id.* at 13 (June 10, 1980).

163. Florida Legislature, History of Legislation, 1980 Special Session D, Senate Bill Actions Report at 3.

164. Fla. SB 15-D.

165. *Id.* at 3.

166. Florida Legislature, History of Legislation, 1980 Special Session D, Senate Bill Actions Report at 3.

167. Act of July 1, 1980, ch. 80-298, 1980 Fla. Laws 1312.

V. STATUTES AND COMMON LAW AFFECTING MOTOR CARRIERS—POST-SUNSET

Despite the repeal of chapter 323, there are many statutes which will continue to affect the operations of those individuals and organizations who transport freight or persons for hire. In the absence of the PSC, Florida agencies such as the Department of Highway Safety and Motor Vehicles, Department of Legal Affairs and the Department of Transportation will be primarily responsible for enforcement of these laws. These statutes regulate, albeit less restrictively, those areas of operations formerly regulated by the PSC—entry, rates and safety.

The common law will also play an important role. Prior to chapter 323 the common law governed motor common carriers.¹⁶⁸ When chapter 323 was enacted, the common law was modified. The repeal of the chapter reinstated the common law.¹⁶⁹

In Florida, the common law is derived from two sources. Chapter 2.01, Florida Statutes,¹⁷⁰ incorporates into Florida law the common law of England which was in effect on July 4, 1776.¹⁷¹ In addition, the common law includes case law declared by American courts.¹⁷² Since motor carriers were regulated by statute soon after their coming into commercial prominence, very little common law developed which was specifically directed to this mode of common carrier. However, the law which emerged concerning other common

168. *Kennedy v. City of Daytona Beach*, 182 So. 228, 229 (Fla. 1938). See, e.g., *State ex rel. Burr v. Jacksonville Terminal Co.*, 106 So. 576, 584 (Fla. 1925).

169. See *State v. McLendon*, 109 So. 2d 783, 785 (Fla. 3d Dist. Ct. App. 1959). In contrast, the repeal of a statutory provision does not reinstate a prior statute. See FLA. STAT. § 20.4 (1979).

170. (1979).

171. In 1845, Florida's first legislature directed the Governor of Florida to compile the English common law in existence on July 4, 1776. The Governor then appointed Leslie A. Thompson to complete the task. Mr. Thompson identified several provisions one of which related to carriers: 7 Geo. 2, C. 15 (1734). 1 FLA. STAT. ANN. ch. 2 (West 1961). By this proclamation King George limited the liability of the owner of a ship for damage to goods he transported. The owner need not pay any amount over the value of the ship and its adornments, if the loss occurred without the ship owner's knowledge. If the stated value did not cover the damages of multiple plaintiffs, they were to recover from the value in proportion to their losses. Multiple owners could intervene to show that they had no knowledge, limiting their liability to the value of the ship. Discovery was authorized to determine the losses. *Id.*

The King did not state that the edict exclusively applied to common carriers. However, the preamble indicates that this was his intent. He noted the increase in the number of ships and vessels. From this, he reasoned that the statement was necessary to promote the use of ships by merchants. Thus it appears he anticipated transportation of goods for hire.

172. *State v. Egan*, 287 So. 2d 1, 6 (Fla. 1973).

carriers is applicable in large part by analogy and must be considered as the source of legal principles controlling common carriers in Florida today.

Early English law defined a "common carrier" as "any man undertaking for hire to carry the goods of all persons indifferently."¹⁷³ The Florida Supreme Court addressed the common law responsibilities of common carriers and embraced the English definition.¹⁷⁴ The United States Supreme Court summed up the definition by stating that "the principles of the common law applicable to common carriers, . . . demanded little more than that they should carry for all persons who applied, . . . and that their charges for transportation should be reasonable."¹⁷⁵ Thus, at common law a common carrier is one who indiscriminately provides its services and reasonably charges for the accomodation. This definition is the basis for determining which motor carriers will be subject to the requirements of common law. Like certain remaining Florida statutes, the common law will also serve to "regulate" the entry, rates and safety of motor carriers.

A. Entry

Anyone desiring to enter the business of intrastate motor carrier transportation will find few Florida laws standing in his way, other than those generally applicable to every prospective driver and vehicle owner. Obviously, a driver must have a valid license, issued by the Department of Highway Safety and Motor Vehicles upon examination; however, any person operating a truck with a gross weight in excess of 8,000 pounds or in excess of 80 inches in width, or operating a vehicle transporting persons for hire is required to obtain a chauffeur's license.¹⁷⁶

No separate statutory insurance requirements exist expressly for motor carriers; therefore, the insurance requirements applicable to all vehicle owners also apply to motor carriers. Every owner or registrant of a motor vehicle must have an insurance policy, or other

173. *Gisbourn v. Hurst*, 91 Eng. Rep. 220 (K.B. 1710) (cited in No. 177 ENGLISH REPORTS INDEX TO CASES 648 (1932)). This definition is landmark in forming the basis of the duty of common carriers to serve patrons without discrimination. Y. SMITH, N. DOWLING & R. HALE, *CASES ON PUBLIC UTILITIES* 4 n.21 (2d ed. 1936).

174. *Bennett v. Filyaw*, 1 Fla. 403, 405 (1847). The court stated: "A common carrier in law has been defined to be one who undertakes for hire or reward to transport the goods of such as chose to employ him from place to place, as a business and not as a casual occupation *pro hac vice*." (emphasis in original).

175. *Interstate Commerce Comm'n v. Baltimore & O. R. R.*, 145 U.S. 263, 275 (1892).

176. FLA. STAT. § 322.03 (1979).

approved method of security, which provides "personal injury protection" (PIP) benefits.¹⁷⁷ In addition to these requirements, liability requirements are also imposed, but only upon persons involved in an accident in which property damage exceeds \$500 or in which bodily injury occurs, and upon persons convicted of certain traffic violations.¹⁷⁸ These requirements differ from those imposed by the PSC upon certified carriers. In order to show proof of financial ability to respond for damages in future accidents, vehicle operators must obtain liability insurance, or other approved forms of security, in the amount of \$10,000 for bodily injury or death to any one person, \$20,000 for bodily injury or death to two or more persons in any one accident, and \$5,000 for damage to physical property.¹⁷⁹ The PSC by rule had required \$100,000/\$300,000/\$50,000 liability coverage for most carriers, and \$2,500/\$5,000 cargo insurance.¹⁸⁰

A motor carrier is apparently now required, for the first time, to obtain an inspection sticker. Every registered motor vehicle must obtain a safety equipment inspection from the Department of Highway Safety and Motor Vehicles annually.¹⁸¹ The statutes currently provide an exemption from this requirement for vehicles operating under a certificate issued by the PSC;¹⁸² the exemption is presumably no longer effective.

The above requirements of a license, insurance, and a safety inspection appear to be the only Florida statutes an entering motor carrier must satisfy to begin operating unless the business is to be incorporated, in which case it could be subject to the provisions of the Florida General Corporation Act.¹⁸³

177. Florida Automobile Repairs Reform Act, FLA. STAT. §§ 627.733, .736 (1979). The required coverage must be at least \$10,000. This coverage provides payment of medical and disability benefits to the named insured, household relatives, persons operating the vehicle, passengers in the vehicle, and persons struck by the vehicle if not an occupant of a vehicle. *Id.* PIP coverage provides payment of 80% of medical expenses and 80% of income loss. *Id.* § 627.736. Unless a person suffers a certain "significant and permanent" injury, that person is prohibited from recovering damages for bodily injury in tort. *Id.* § 627.737.

178. *Id.* §§ 324.011, .051.

179. *Id.* §§ 324.021-.031.

180. FLA. ADMIN. CODE R. 25-5.31.

181. FLA. STAT. § 325.12 (1979). The statute requires that the following equipment be determined to be in safe operating condition: brakes, lights, horn, steering mechanism, windshield wipers, directional signals, tires, and exhaust system. *Id.* § 325.19.

182. *Id.* § 325.28.

183. *Id.* ch. 607 (1979). In regard to corporate formation, the act requires certain information to be contained in the articles of incorporation which must be filed with the Florida Department of State. The required information relates to the name, duration and purpose of the corporation; number, class and par value of shares; rights of shareholders; and the

Once a carrier begins operations, however, additional statutes will affect its methods of operation. Of particular importance to the motor carrier industry is the Documents of Title Act¹⁸⁴ of the Uniform Commercial Code which applies to bills of lading issued by private as well as common carriers.¹⁸⁵ Generally, part III of chapter 677 addresses the issuance of bills of lading and liability associated with them,¹⁸⁶ the delivery of goods under a bill of lading and liability for breaches of those contracts,¹⁸⁷ and the creation of a carrier's lien on the goods and its enforcement.¹⁸⁸ Also, part III specifically mentions common carriers by spelling out the requirements of loading the goods when the issuer of the bill is a common carrier.¹⁸⁹ Further, this part does not supercede any rule of law imposing liability on the common carrier for damages not caused by its negligence.¹⁹⁰ Thus, the common carrier's liability for damage to goods under its control remains that of an insurer.¹⁹¹ Part IV specifies general obligations for goods under bills of lading and warehouse receipts which relate primarily to delivery.¹⁹² Part V outlines generally the requirements for negotiations and transfer of negotiable documents of title.¹⁹³

Also affecting a carrier's method of operation is the Deceptive and Unfair Trade Practices Act.¹⁹⁴ The act declares unlawful any

names and addresses of the agent, directors and incorporators. *Id.* § 607.164.

184. *Id.* ch. 677.

185. 20 FLA. JUR. 2d *Documents of Title* § 17 (1980). A bill of lading is defined by the act as "a document evidencing the receipt of goods for shipment by a person engaged in the business of transporting or forwarding goods." FLA. STAT. § 671.201(6) (1979).

186. *See* FLA. STAT. §§ 677.301-.302, .304-.306 (1979).

187. *See id.* §§ 677.303, .307.

188. *See id.* §§ 677.307-.309.

189. *See id.* § 677.301(2)-(3). Specifically, if the common carrier is the issuer and loads the freight, he must count the packages or determine the kind and quantity of bulk freight. *Id.* § 677.301(2). When the issuer is a common carrier but the items are loaded by the shipper who has available adequate facilities for weighing, the common carrier has a reasonable time after the loading to make the determination of the kind and quantity of the shipment. *Id.* § 677.301(3).

190. *See id.* § 677.309(1).

191. *Gulf Coast Transp. Co. v. Howell*, 70 Fla. 544, 551 (1915).

192. *See* FLA. STAT. § 677.403 (1979). A holder of the goods must tender the goods to the person holding the document after the payment of the charges and expenses, and, if the document is negotiable, after also surrendering the document, and it is cancelled. *Id.* A holder of goods who delivers them in good faith is released from liability for wrongful delivery. *Id.* § 677.404.

193. *Id.* §§ 677.101-.105. Part I sets out definitions and construction aids for the Act. *Id.* §§ 677.101-.105. Part II relates to warehouse receipts which are not of particular importance to the carrier. *Id.* §§ 377.201-.210.

194. *Id.* §§ 501.201-.213.

unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹⁹⁵ The Department of Legal Affairs has adopted rules specifying prohibited practices¹⁹⁶ which are required to be consistent with the rules and decisions of the Federal Trade Commission¹⁹⁷ interpreting the Federal Trade Commission Act.¹⁹⁸ Both state enforcement and private rights of action are authorized.¹⁹⁹

The actions of "common carriers," although not specifically motor common carriers, are affected by statutes which in practice have been assumed to apply only to railroads.²⁰⁰ However, the Florida courts in several instances have applied provisions of these chapters to motor carriers.

In a well reasoned opinion, *Seaboard Air Line Railway v. Simon*,²⁰¹ the Florida Supreme Court upheld an equal protection challenge to the forerunner of section 353.01, Florida Statutes.²⁰² As originally written the law applied solely to railroads and stated the procedure for claims for lost or damaged freight.²⁰³ The court summarized the guarantee of equal protection:

An unreasonable classification of persons or corporations for the purposes of a legislative regulation that will be burdensome to those included in the class regulated, leaving others who are similarly conditioned with reference to the subject regulated free from the regulation and burden, may be an arbitrary exercise of governmental power.²⁰⁴

From there the court reasoned that the subject of the section was equally applicable to all common carriers.²⁰⁵ The justifications offered for the classification were not sufficient, *i.e.*, the more fre-

195. *Id.* § 501.204.

196. *See* FLA. ADMIN. CODE RS. 2-7.01-23.12.

197. FLA. STAT. § 501.205(2) (1979).

198. 15 U.S.C. § 45(a)(1) (1976).

199. FLA. STAT. §§ 501.207, 211 (1979).

200. Chapters 351, 352, 353, 354, 355, and 358 all contain sections which by their terms apply to "common carriers." In 1980, the legislature designated part of ch. 351 and all of chs. 352-360 for repeal on July 1, 1982 after a review is completed on those chapters. Act of July 1, 1980, ch. 80-289, 1980 Fla. Laws 1224.

201. 47 So. 1001 (Fla. 1908).

202. (1979).

203. *See* Act of June 1, 1905, ch. 5424, 1905 Fla. Laws 104. The current version at FLA. STAT. § 353.01 (1979) pertains to common carriers and retains the procedure controlling claims.

204. 47 So. at 1002.

205. *Id.* at 1002-03.

quent use of railroads than other common carriers at that time; the absence of competition from other carriers; and the amount of business transacted by the railroads.²⁰⁶ However, the court expressed saving language only for provisions peculiar to railroads.²⁰⁷ Therefore, those sections which address the general duty of a common carrier must be applied to all types of common carriers as a class.²⁰⁸

In fact, the Third District Court of Appeal in *Ipec, Inc. v. International Printing Machine Corp.*²⁰⁹ has applied sections 355.01, .03 and .09, Florida Statutes²¹⁰ in favor of an intrastate motor carrier. These sections establish a statutory lien for common carriers,²¹¹ provide for the sale of the encumbered goods,²¹² and grant immunity to a carrier for claims of conversion after the sale of the goods if the provisions of the chapter are met.²¹³ Following the logic of *Simon*, chapter 355 in its entirety should be construed in favor of all common carriers as a class. At issue in *Ipec* was a statutory sale of nonperishable goods under lien.²¹⁴ Generally, the other sections in the chapter address the sale of perishable property under lien.²¹⁵ No apparent, logical or legal difference exists between the two kinds of property sufficient to justify a difference in application.

Finally, section 358.11, Florida Statutes,²¹⁶ was amended in 1979, deleting references to railroads and replacing them with "common carrier."²¹⁷ Consistently, all of chapter 358 refers to common carriers. The subject of the chapter is the ticketing of passengers on

206. *Id.*

207. *Id.* at 1003-04.

208. See generally FLA. STAT. §§ 352.19-.21 (1979) (relating to discrimination in rates); *id.* § .26-.27 (relating to delivery or freight); *id.* § .33-.36 (relating to transportation of livestock); *id.* ch. 353 (relating to claims for lost or damaged freight); *id.* ch. 354 (relating to special officers for the protection and safety of carrier's); *id.* ch. 355 (relating to a carriers lien); *id.* ch. 358 (relating to tickets on carriers).

209. 251 So. 2d 911 (Fla. 3d Dist. Ct. App. 1971).

210. (1979).

211. FLA. STAT. § 355.01 (1979).

212. *Id.* § 355.03.

213. *Id.* § 355.09.

214. 251 So. 2d 911, 913.

215. Chapter 355 contains the following sections not construed in *Ipec*: FLA. STAT. §§ 355.06-.07 (1979) (relating to the sale of perishable property other than livestock); *id.* §§ 355.04-.05 (relating to the sale of livestock); *id.* § 355.08 (relating to the bidding procedure for the sales); *id.* § 355.02 (relating to the procedure prior to sale of nonperishable property).

216. (1979).

217. Act of June 19, 1979, ch. 79-191, 1979 Fla. Laws 822.

common carriers.²¹⁸ Since most common carriers of persons use tickets or their facsimile, under *Simon*, it is logical to assume that chapter 358 should apply to all common carriers including motor carriers.

Common law should have the least effect on entry, *per se*, because entry into the marketplace was not restricted by the common law.²¹⁹ Without the statutory barrier to entry, the oligopolistic nature of the market is relaxed. Theoretically, the market becomes a free system under which the common carrier will act independently. However, the common carrier must comply with several duties imposed by common law.

Foremost is the duty to serve the public indiscriminately. In *Johnson v. Pensacola & Perdido Railroad*,²²⁰ the court set out the duty: "[A]s against a common or public carrier, every person has the same right; that is all cases, where his common duty controls, he cannot refuse A and accomodate B; . . ."²²¹ No contract can relieve a carrier of this duty,²²² and it may be enforced by mandamus.²²³

As part of this duty, a common carrier is required to transport those goods and passengers which are offered and accepted for carriage.²²⁴ Passenger status begins when a person offers and is accepted for travel by the carrier²²⁵ and continues until the passenger leaves the carrier or performs an act which causes the relationship to terminate.²²⁶ Incident to the duty to transport passengers is the duty to carry their baggage.²²⁷ For the protection of this type of goods (indeed for all transported freight) a carrier of goods is held to the duty of an insurer of the goods.²²⁸ However, liability does

218. See FLA. STAT. ch. 358 (1979).

219. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*, 79 COL. L. REV. 426, 429 (1979).

220. 16 Fla. 623 (1878).

221. *Id.* at 667.

222. *State ex rel. Burr v. Jacksonville Term. Co.*, 106 So. 576, 584 (Fla. 1925).

223. See *State v. Atlantic Coast Line R.R.*, 40 So. 875, 881 (Fla. 1906).

224. See, e.g., *Orlando Transit Co. v. Florida R.R. & Public Utils. Comm'n*, 37 So. 2d 321, 327-28 (Fla. 1948).

225. *Swilley v. Economy Cab Co.*, 46 So. 2d 173, 176 (Fla. 1950).

226. *Henderson v. Tarver*, 123 So. 2d 369, 371 (Fla. 2d Dist. Ct. App. 1960).

227. *Atlantic Coast Line R.R. v. Campen Bros. Co.*, 154 So. 131, 133 (Fla. 1934). Baggage includes articles necessary for personal comfort. *Id.* at 132. A carrier is entitled to know the contents of the carriage. *Id.* at 133.

228. See *Gulf Coast Transp. Co. v. Howell*, 70 So. 567, 569 (Fla. 1915) (for the carriage of goods); *Rudisil v. Taxicabs of Tampa, Inc.*, 147 So. 2d 180, 182 (Fla. 2d Dist. Ct. App. 1962) (for the carriage of baggage). However, if the items carried by the passenger are not personal, the liability is only that of bailee. *Atlantic Coast Line R.R. v. Campen Bros. Co.*,

not attach until the items are in the control of the carrier.²²⁹ Moreover, the goods must be delivered in a reasonable time²³⁰ and according to the shipper's order.²³¹ Excuses for delay are however allowed.²³² If the customer does not pay the carrier charges, there is a common law lien on the goods for those charges²³³ which attaches as soon as the charges are due and remains as long as the carrier has possession of the goods.²³⁴ To aid the common carrier in meeting these duties, it is bound to provide adequate facilities for carriage.²³⁵

B. Rates

For the first time in half a century, motor carriers will not be required to seek the approval of the PSC prior to a rate change. However, there is at least one important state law of which motor carriers must be apprised, the state antitrust law.²³⁶ Florida's antitrust law had remained basically unchanged since 1915.²³⁷ Until

154 So. 131, 133 (Fla. 1934).

229. See *Wilson & Toomer Fertilizer v. Atlantic Coast Line Ry.*, 136 So. 339, 341 (Fla. 1931) (for the carriage of goods); *Rudisil v. Taxicabs of Tampa, Inc.*, 147 So. 2d 180, 182 (Fla. 2d Dist. Ct. App. 1962) (for the carriage of persons). Liability for the carriage of goods relates back to old English common law. In *Bastard v. Bastard*, 89 Eng. Rpts. 81 (K.B. 1680) (cited in No. 177 ENGLISH REPORTS INDEX TO CASES 119 (1932)), King Charles stated: "A common carrier is liable for the loss of goods delivered to him to carry, . . ." *Id.*

230. *Florida East Coast Ry. v. Peters*, 73 So. 151, 161 (Fla. 1916).

231. In *North Pa. R.R. v. Commercial Bank of Chicago*, 123 U.S. 727, 733-34 (1887), the United States Supreme Court stated: "The duty of a common carrier is not merely to carry safely the goods intrusted to him, but also to deliver them to the party designated by the terms of shipment, or to his order, at the place of destination."

For passenger carriers, the Florida Second District Court of Appeal succinctly stated the rule: "It is (a) well established rule of law that once the relationship of carrier and passenger is established, it will not ordinarily terminate until the passenger has safely alighted at his destination." *Henderson v. Tarver*, 123 So. 2d 369, 371 (Fla. 2d Dist. Ct. App. 1960).

232. *Pennsylvania R.R. v. Greco*, 25 So. 2d 809, 811 (Fla. 1946). The excuses include an act of God, of a public enemy, of a shipper, and of a public authority. However, if the delay can be anticipated, excuse is allowed only if notice is given to the shipper. *Id.*

233. *Wabash R.R. v. Pearce*, 192 U.S. 179, 187 (1903). "It is unnecessary to cite authorities to the proposition that it is the common law duty of the carrier to receive, carry and deliver goods; that by virtue of this obligation it is entitled to retain possession until its charges are paid." *Id.*

234. *Id.*

235. See *Atlantic Coast Line R.R. v. Florida Fine Fruit Co.*, 112 So. 66, 69 (Fla. 1927); *State v. Florida E. Coast Ry.*, 50 So. 425, 427 (Fla. 1909). See also *Burdick, The Origin of the Peculiar Duties of Public Service Companies*, 11 COL. L. REV. 514, 515 (1911).

236. FLA. STAT. ch. 542 (1979), as amended by Florida Antitrust Act of 1980, ch. 80-28, 1980 Fla. Laws 86.

237. Memorandum from Jerome Hoffman, Assistant Attorney General, Antitrust Division, Florida Department of Legal Affairs, to Ken Tucker, Deputy Attorney General of Florida (Feb. 26, 1979).

the 1980 legislative session, the law had no provision for the right of private action, and provided only one method of enforcement by the state attorney general. The exclusive public remedy was corporate dissolution for domestic firms and revocation of licenses to do business for a foreign firm. A revised antitrust law effective October 1, 1980, more stringently prohibits combinations in restraint of trade. For the first time, Florida law prohibits unilateral attempts to monopolize any part of a trade.²³⁸ Individuals are subject to a civil penalty of up to \$100,000 and corporations can be fined up to \$1,000,000. The attorney general or a state attorney with written permission from the attorney general is authorized to recover treble damages on behalf of Florida citizens injured by a violation of the act. Broad investigative powers are granted the attorney general prior to filing a formal complaint.²³⁹ Of particular importance to motor carriers, the legislature appropriated \$100,000 to the Department of Legal Affairs and the Office of the Attorney General specifically earmarked for "legal services associated with litigation resulting from trucking deregulation."²⁴⁰

At common law, charges assessed by common carriers are limited only by the bounds of reasonableness. In the landmark case of *Johnson v. Pensacola & Perdido Railroad*²⁴¹ the Florida Supreme Court announced the rule: "[T]he entire public, have the right to the same carriage for a reasonable price, and at a reasonable charge for the service performed"²⁴² However, the prices charged are merely matters of evidence. They cannot be used as a measure of damage unless the lesser charge is established as the reasonable charge considering the value of the services.²⁴³ The reason for this rule is to protect the public from extortion.²⁴⁴

Reasonable does not mean equal. According to the *Johnson* court, the rule is that the common carrier must charge the same rate for identical kinds of service under identical conditions. But it need not charge an equal amount for the same kind of freight transported at the same time without more circumstances showing unreasonableness.²⁴⁵ The court reached this conclusion by review-

238. Ch. 80-28, § 1, 1980 Fla. Laws 86.

239. *Id.*

240. Act of July 10, 1980, ch. 80-411, § 1, 1980 Fla. Laws 1674.

241. 16 Fla. 623, 667 (1878).

242. *Id.* (emphasis in original).

243. *Id.*

244. *Id.* at 668.

245. *Id.* at 672.

ing the English and American common law.²⁴⁶ To embrace an equality rule would force a shipper, trying to show the unreasonableness of a charge, to find another shipper who merely received a lesser charge. A competitor may operate under different circumstances. The considerations of fairness which reasonableness connotes would permit differing costs to generate different prices.²⁴⁷

To remedy an unreasonably excessive charge, the aggrieved party may bring an action for money "had and received." The cause may be brought "for money paid by mistake or upon consideration which has failed, or for money obtained through imposition, express or implied, or extortion or oppression, or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under these circumstances."²⁴⁸

Other common law rights and duties exist for common carriers of property and persons. For carriers of property, a right exists to demand prepayment.²⁴⁹ For common carriers engaged in the transportation of people, a carrier may require payment on demand,²⁵⁰ but a passenger must use a ticket before the expiration date or forfeit any refund unless a contract specifies to the contrary.²⁵¹

C. Safety

When it became clear that the repeal of chapter 323 was imminent the 1980 legislature provided for a transfer of the Transportation Enforcement Section of the PSC to the Department of Transportation.²⁵² The personnel were assigned to the Department's Bureau of Weights within the Division of Road Operations.²⁵³ Former PSC safety investigators, now weight inspection officers, are authorized "to enforce any rules relating to safety adopted by the Florida Highway Patrol."²⁵⁴ The law authorizes the Division of Florida Highway Patrol to adopt rules necessary to implement the provisions of the Florida Uniform Traffic Control Law.²⁵⁵ This

246. *Id.* at 660-67.

247. *Id.* at 668. To the contrary, other jurisdictions support an equality approach. See generally McCurdy, *The Power of a Public Utility to Fix its Rates and Charges in the Absence of Regulatory Legislation*, 38 HARV. L. REV. 202, 206 (1924).

248. *Cullen v. Seaboard Air Line Ry.*, 58 So. 182, 184 (Fla. 1912).

249. *Wadley S. Ry. v. Georgia*, 235 U.S. 651, 656 (1915).

250. *See United Rys. & Elec. Co. v. Hardesty*, 51 A. 406, 410 (Md. 1902).

251. *See Trezona v. Chicago G.W. Ry.*, 77 N.W. 486, 488 (Iowa 1898).

252. Act of July 1, 1980, ch. 80-298, 1980 Fla. Laws 1312.

253. *Id.*

254. *Id.* § 1.

255. *Id.* § 4.

rulemaking authority expires on July 1, 1982.²⁵⁶ Chapter 316 contains the state's traffic laws, including prohibited acts (speeding, reckless driving, etc.)²⁵⁷ as well as required equipment, weight and load laws.²⁵⁸ Although not as extensive as the federal safety laws which had been incorporated by reference by PSC rules,²⁵⁹ chapter 316 is a fairly comprehensive set of regulations which should provide significant protections. The chapter is supplemented by chapter 325, Florida Statutes,²⁶⁰ which includes the safety inspection laws that are now applicable to previously certified motor carriers.²⁶¹

Other Florida statutes related to transportation safety include section 501.075, Florida Statutes,²⁶² which prohibits various acts relating to the handling of hazardous substances; sections 633.01 and .05, Florida Statutes,²⁶³ authorizing the State Fire Marshal to promulgate and enforce rules relating to transportation of combustibles; and section 381.512, Florida Statutes,²⁶⁴ authorizing the Department of Health and Rehabilitative Services to adopt rules relating to transportation of radioactive materials.

At common law, an element of a common carrier's duty to transport by adequate facilities includes the duty to deliver the carriage *safely* whether the cargo is goods or persons.²⁶⁵ In fact, a carrier of goods is an *insurer* of the property it transports.²⁶⁶ On the other hand, a carrier of persons is not required to insure the safety of its passengers.²⁶⁷ Yet it must meet the highest degree of *care* for persons in their control²⁶⁸ and consider the physical and mental condi-

256. *Id.* § 5.

257. FLA. STAT. §§ 316.007-.209 (1979).

258. *Id.* §§ 316.2095-.560.

259. FLA. ADMIN. CODE R. 25-5.110 (adopting 49 C.F.R. §§ 390-97 (1975) (with exceptions)).

260. (1979).

261. FLA. STAT. §§ 325.11-.33 (1979).

262. (1979).

263. (1979).

264. (1979).

265. *See* North Pa. R.R. v. Commercial Bank of Chicago, 123 U.S. 727, 733-34 (1887) ("duty of the common carrier is not merely to carry *safely* the goods intrusted to him, but also to deliver them." (emphasis added)); Florida Ry. v. Dorsey, 52 So. 963, 966 (Fla. 1910) (for the carriage of persons).

266. Gulf Coast Transp. Co. v. Howell, 70 So. 567, 569 (Fla. 1915).

267. Swilley v. Economy Cab Co., 46 So. 2d 173, 177 (Fla. 1950).

268. *Id.* A degree or duty of *care* should not be confused with a degree of *negligence*. The duty of care is merely an element in the negligence cause of action. W. PROSSER, *HANDBOOK ON THE LAW OF TORTS* § 30 (4th ed. 1971). In contrast, a degree of negligence is a type of negligence itself. *See id.* § 34. This distinction is crucial in Florida and other comparative

tion of each passenger.²⁶⁹ To remedy a breach of this duty of safe transportation, a passenger may sue in contract or in tort.²⁷⁰

Thus, the repeal of chapter 323 did not leave the motor common carrier "unregulated." A carrier must continue to meet the existing statutory demands and common law duties affecting the previously regulated functions — entry, rates and safety.

D. Local Regulation

An important yet unresolved question exists concerning the

negligence jurisdictions, because the comparative approach abolished any need for degrees of negligence. In *Hoffman v. Jones*, 280 So. 2d 431, 435 (Fla. 1973), the degrees of negligence were established to mitigate the harshness of the contributory negligence scheme. W. PROSSER § 67. After the contributory approach was abolished and the comparative approach was adopted, the usefulness of the degrees of negligence was negated.

However, the degrees of care remain as exemplified by a post *Hoffman* case, *Transit Cas. Co. v. Puchalski*, 382 So. 2d 359 (Fla. 5th Dist. Ct. App. 1980). In *Transit*, the court set out the rule: "While a carrier is not an insurer of the safety of its passengers, a common carrier is expected to exercise the highest degree of care . . ." *Id.* at 360.

269. *Edwards v. Jacksonville Coach Co.*, 88 So. 2d 543, 545 (Fla. 1956) (citing *Tampa Elec. Co. v. Fleischaker*, 12 So. 2d 901, 902 (1943)). *Edwards* reversed a lower court's dismissal of a negligence claim. *Id.* at 545. The plaintiff, an infirmed, aged and corpulent woman with her arm in a cast, was injured when she fell from defendant's bus. The fall was allegedly caused when the door through which she was ordered to exit slammed and caught her dress, causing her to miss her step. With her disability, she was unable to hold the door open and step down at the same time. *Id.* at 544. The court recited the heightened duty of care and stated: "At a time when she needed help she seems to have met hinderance." *Id.* at 545.

In *Swiley v. Economy Cab. Co.*, 46 So. 2d 173 (Fla. 1950), on the other hand, the court drew a distinction between two counts at issue and did not find the high degree of care in the first count but did find it in the second. 46 So. 2d at 177. The plaintiff had been accepted as a taxicab passenger while he 'was obviously and apparently drunk and intoxicated to the point of being physically and mentally irresponsible and incapable.' *Id.* at 175. The cab subsequently had a flat tire and the driver stopped to repair it. *Id.* The plaintiff was injured when he left the defendant's taxicab and was struck by an oncoming car. The first count merely alleged that when the cab stopped, the plaintiff left the cab and placed himself in the precarious position which resulted in his injury. *Id.* at 175-76. The court stated that the duty of care did not impose superhuman powers. To have held the company liable would have made it an absolute insurer of conditions beyond its control. *Id.* at 177. This stringent standard is not an element of the duty to transport passengers safely. *Id.* On the other hand, the second count alleged that the plaintiff did not alight until his offer of aid to the driver was accepted. The court used this factual distinction to find that the second count might support a cause of action. *Id.* at 177-78.

270. *Herdia v. Safeway Trails, Inc.*, 369 So. 2d 418, 420 (Fla. 3d Dist. Ct. App. 1979). Here the plaintiff, a passenger on defendant's bus, was permanently injured when the bus ran into a canal. By the time the action was filed, the statute of limitations had run for a tort cause and for any action on the breach of an oral contract. However, time remained for an action on a written contract. *Id.* at 419-20. The court reversed the dismissal by the lower court, recognizing that the plaintiff was traveling on the basis of a written contract, the ticket. *Id.* at 420.

degree of regulation local governments will not be permitted to impose on motor carriers. Article VIII, section 2 of the Florida Constitution authorizes municipalities to exercise any power for municipal services except as otherwise provided by law.²⁷¹ In recognition of this provision, the legislature in 1973 implemented a broad grant of power to municipalities by enacting the Municipal Home Rule Powers Act.²⁷² The act authorizes each municipality "to enact legislation concerning any subject matter upon which the state legislature may act," with certain exceptions.²⁷³

Chapter 323 expressly stated that PSC regulation of motor carriers prevailed in the case of conflict between its regulation and the provisions of any city or county ordinance.²⁷⁴ However, recognizing that motor carriers operating wholly within a municipality and its suburban territory were exempt from PSC regulation, the statutes expressly stated that nothing in the chapter should be construed to limit the power of any municipality to license, control and regulate such carriers.²⁷⁵ While chapter 323 had preserved the power of a municipality to regulate carriers which operated *exclusively* within the municipality, the repeal of the chapter raises the question of whether municipalities will now be authorized to regulate the intramunicipal operations of an otherwise intermunicipal carrier. In particular, it can now be argued that a city will be permitted to determine which carriers will be permitted to pick up or deliver shipments within the city, and be able to set the rates for an intramunicipal shipment of a carrier which also transports to other areas of the state.

Certain Florida statutes may be examined to determine the jurisdictional extent of a municipality's regulatory power. Section 205.042, Florida Statutes²⁷⁶ enumerates those persons upon whom a municipality may levy an occupational license tax for the privilege of engaging in any business within its jurisdiction including

271. FLA. CONST. art. VIII, § 2(b) reads as follows: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective."

272. Ch. 73-129, 1973 Fla. Laws 238 (current version at FLA. STAT. ch. 166 (1979)).

273. FLA. STAT. § 166.021(3) (1979). The exceptions include those subjects preempted to the local governments or prohibited by the Florida Constitution. Also excepted are laws relating to the geographical size of the local unit. *Id.*

274. *Id.* § 323.07 (1979) (repealed 1980).

275. *Id.* § 323.054 (1979) (repealed 1980).

276. (1979).

any person who maintains a permanent business location or branch office within the municipality²⁷⁷ and any person who engages in interstate commerce unless preempted by the enumerated powers clause of the United States Constitution.²⁷⁸ A recent opinion of the Florida Attorney General interpreted the meaning of the latter situation and states that it is not sufficient to find interstate business elsewhere in order for the municipality to levy an occupational tax. Rather the business must be engaged in interstate commerce within the jurisdiction of the city in order for it to fall within the taxing power of the city under section 205.042(3).²⁷⁹ Following the logic of this opinion, in the absence of a permanent business location or branch office, a municipality would be without the authority to levy an occupational license tax on most motor carriers. However, a separate statutory section within the Municipal Home Rule Powers Act authorizes a municipality to levy reasonable *regulatory* fees: "A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter."²⁸⁰ The Attorney General has stated that a regulatory license fee imposed under this section does not fall within the purview of chapter 205 and the municipality may levy the regulatory fee on a person who does not maintain a permanent business location or branch office within the municipality. Whether the license fee meets the requirements necessary to be considered a regulatory fee, according to this opinion, is an issue of fact to be determined by the judiciary.²⁸¹

In any event, the Municipal Home Rule Powers Act is a broad

277. *Id.* § 205.042(1)-(2).

278. *Id.* § 205.042(3).

279. 78-120 OP. ATT'Y GEN. 296, 297 (October 11, 1978). The opinion summarized its findings as follows:

A business that publishes and prints television guides outside a taxing municipality's jurisdiction and distributes such publications to hotels within the municipality and throughout Florida, and whose sales representatives solicit advertising within the taxing municipality which is run in television guides subsequently published and delivered to hotels within the municipality from which the guides are distributed by such hotels to their guests and others, is not, in the absence of engaging in separable and distinct local activities or incidents other than the solicitation and the delivery, or in the absence of a permanent business location, liable to the occupational license tax provided for in s. 205.042(3), F. S.

280. FLA. STAT. § 166.221 (1979).

281. 76-30 OP. ATT'Y GEN. 52 (Jan. 30, 1976).

grant of authority to local governments that has been liberally construed.²⁸² The question of municipal regulation of motor carriers will primarily depend upon the jurisdictional extent of municipal authority rather than the state's preemption or statutory prohibition due to the absence of the latter.

Similarly, counties operating under charters are constitutionally guaranteed all powers of local self-government, consistent with general law.²⁸³ Noncharter counties, however, only have such powers of self government provided by general or special law.²⁸⁴ Like municipalities, charter counties may now have an opportunity to regulate certain aspects of motor carriers operating within its boundaries.

Regulation of motor carriers by local governments is not likely to restrict the marketplace to such a degree as state regulation. In fact, there is no present indication that local governments plan to implement significant regulation of motor carriers in general. However, the legal avenue appears to be open for such regulation, although the extent of regulatory authority is an unresolved question.

VI. CONCLUSION

Literally overnight, Florida intrastate trucking has gone from being an extremely restricted industry to the least regulated in the country. Due to a stalemate between the Florida Senate and House of Representatives, the provisions of the Regulatory Reform Act repealed the laws that had regulated motor carriers for fifty years.

Although statutory and common law will continue to affect motor carriers, the carriers are now largely free to make independent economic decisions concerning the method and scope of their operations. Safety remains the most significant regulation. Due to the law passed at the close of the 1980 session, transferring PSC investigators to the Department of Transportation, little has been lost in manpower for safety enforcement, although the broad rulemaking authority formerly provided to the PSC has been repealed. Concerning rates, the most potentially important statute is the newly revised state antitrust law. The actual impact of this act on

282. See, e.g., *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974); *City of Temple Terrace v Hillsborough Assoc. for Retarded Citizens, Inc.*, 322 So. 2d 571 (Fla. 2d Dist. Ct. App. 1975).

283. FLA. CONST. art. VIII, § (1)(g).

284. *Id.* § 1(f).

motor carrier rates remains to be seen, but the bureau method of rate setting which has long been an aspect of the motor carrier industry is now of questionable legality. The most unregulated aspects of the motor carrier industry will be entry and individual carriers' scope of operations. Minimal legal barriers will exist to transporting persons or goods for hire, and a carrier will be able to make independent judgments on the areas it wishes to serve. Although various common law duties arise once service is provided, the initial decision to provide the service is now unfettered.

It is too soon to judge the merits and disadvantages of deregulation.²⁸⁵ It appears likely that large cities will experience the benefits of competition in terms of increased service and lower rates due to the attractive market in such areas. Undoubtedly, certain small communities will face a reduction in service or increased rates. The one group of persons who are certain to benefit are those individuals who want to enter the motor carrier industry.

The results of motor carrier deregulation in Florida will greatly influence regulatory reform, or the lack of it, in other states. Although many people disagree over the wisdom of deregulation in Florida, few argue about its importance.²⁸⁶

285. Statistics that are available on the two largest bus companies operating in Florida present an interesting comparison. Greyhound, the largest passenger carrier, has eliminated service to 34 small Florida towns. By contrast, Trailways, the second largest carrier, has significantly increased service in Florida since deregulation. As of October 8, 1980, Trailways has added service to at least nine cities, while adding 1,621 miles traveled in Florida daily and 12 full-time operators. Memorandum from Brian Deffenbaugh, Staff Attorney, Senate Committee on Commerce, to Senator Dempsey Barron (Sept. 22, 1980).

286. A suit challenging the constitutionality of the deregulation of motor carriers was filed on June 27, 1980, and subsequently amended on July 7, 1980 in *Alterman Transp. Lines, Inc. v. State*, No. 80-1902 (Fla. Cir. Ct. Leon County July 29, 1980). The court dismissed the complaint with prejudice on July 29, and an appeal was filed on July 31, with the First District Court of Appeal. *Alterman Transp. Lines, Inc. v. State*, No. WW-391 (Fla. 1st Dist. Ct. App., filed July 31, 1980). The main argument on appeal is that the repeal of chapter 323, without providing for a reasonable alternative and without a showing of overpowering necessity for repeal is in violation of FLA. CONST. art. I, § 21: "The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Brief for Appellant at 4, *Alterman Transp. Lines, Inc. v. State*, No. WW-391 (Fla. 1st Dist. Ct. App., filed July 31, 1980). The Appellants rely on the 1973 Florida Supreme Court case of *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), which held the automobile no-fault law to be an unconstitutional denial of access to courts as it applied to suits for physical damage. *Id.* at 4. The court in *Kluger* held that when a right of access to the courts for redress for a particular injury had been provided by statute predating the adoption of FLA. CONST. art. I, the legislature could not abolish that right without providing a reasonable alternative, unless the legislature could show an overpowering public necessity for abolishing the right and that no alternative exists. 281 So. 2d at 1. Appellants allege that the substantive rights provided by chapter 323 were abolished without providing a reasonable alternative or a finding of overpowering public necessity. Brief for Appellant at 6.

The case will probably turn on the question of whether the "rights" provided in ch. 323 were rights for redress of a particular *injury* or, instead, were rights of a different nature, such as the right to be free from competition for which there is no guarantee. *See* ASI, Inc. v. Florida Pub. Serv. Comm'n, 334 So. 2d 594, 596 (Fla. 1976).

