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SENATE BILL 713

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Rod Adair

AN ACT

RELATING TO MOTOR CARRIERS; AMENDING THE MOTOR CARRIER ACT TO PROVIDE FOR CERTIFICATES OF CONVENIENCE AND NECESSITY TO BE ISSUED WITHOUT ECONOMIC CONSIDERATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-2-84 NMSA 1978 (being Laws 1981, Chapter 358, Section 5) is amended to read:

"65-2-84. CERTIFICATE OF CONVENIENCE AND NECESSITY-- REQUIREMENT--STANDARDS FOR ISSUANCE. --

A. It [~~shall be~~] is unlawful for any common motor carrier to operate within this state without first having obtained from the commission a certificate [~~of public convenience and necessity~~].

B. Except as provided in this section, the commission shall issue a certificate to a person authorizing

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1 that person to provide transportation, subject to the  
2 jurisdiction of the commission under the Motor Carrier Act, as  
3 a common motor carrier of persons if the commission finds that  
4 [~~(1)~~] the person is fit, willing and able to provide the  
5 transportation to be authorized by the certificate and to  
6 comply with the Motor Carrier Act and the regulations of the  
7 commission [and

8 ~~(2) the transportation to be provided under~~  
9 ~~the certificate is or will be required by the present or~~  
10 ~~future public convenience and necessity.~~

11 ~~C. Before granting a certificate to a common motor~~  
12 ~~carrier of persons, the commission shall take into~~  
13 ~~consideration existing transportation facilities in the~~  
14 ~~territory for which a certificate is sought, and in case it~~  
15 ~~finds from the evidence that the service furnished by existing~~  
16 ~~transportation facilities is reasonably adequate, the~~  
17 ~~commission shall not grant the certificate].~~

18 [~~D.~~] C. Except as provided in this section, the  
19 commission shall issue a certificate to a person authorizing  
20 that person to provide transportation, subject to the  
21 jurisdiction of the commission under the Motor Carrier Act, as  
22 a common motor carrier of property if the commission finds:

23 (1) that the person is fit, willing and able  
24 to provide the transportation to be authorized by the  
25 certificate and to comply with the Motor Carrier Act and the

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1 regulations of the commission; and

2 (2) on the basis of evidence presented by  
3 persons supporting the issuance of the certificate, that the  
4 service proposed will serve a useful public purpose,  
5 responsive to a public demand or need.

6 ~~[E. The commission shall not issue a certificate~~  
7 ~~as a common motor carrier of property under Subsection D of~~  
8 ~~this section if it finds, on the basis of evidence presented~~  
9 ~~by persons objecting to the issuance of a certificate, that~~  
10 ~~the transportation to be authorized by the certificate is~~  
11 ~~inconsistent with the public convenience and necessity.]~~

12 ~~F.]~~ D. Before granting a certificate to a common  
13 motor carrier of property under Subsection ~~[D]~~ C of this  
14 section, the commission shall take into consideration the  
15 transportation policy of Section 65-2-81 NMSA 1978 ~~[and the~~  
16 ~~effect of issuance of the certificate on existing carriers;~~  
17 ~~provided, however, that the commission shall not find~~  
18 ~~diversion of revenue or traffic from an existing carrier to~~  
19 ~~be, in and of itself, inconsistent with the public convenience~~  
20 ~~and necessity].~~

21 ~~[G.]~~ E. The commission shall issue a certificate  
22 to a person authorizing that person to provide transportation  
23 subject to the jurisdiction of the commission under the Motor  
24 Carrier Act as a common motor carrier of property if the  
25 commission finds that the person is fit, willing and able to

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1 provide the transportation to be authorized by the certificate  
2 and to comply with that act and the regulations of the  
3 commission [~~and if the application is for authority to provide~~  
4 ~~transportation:~~

5 (1) ~~to any community not regularly served by~~  
6 ~~a common motor carrier of property certified under this~~  
7 ~~section;~~

8 (2) ~~services which will be a direct~~  
9 ~~substitute for abandoned rail service to a community if such~~  
10 ~~abandonment results in the community not having any rail~~  
11 ~~service and if the application is filed within one hundred~~  
12 ~~twenty days after the abandonment has been approved by the~~  
13 ~~commission or by the United States interstate commerce~~  
14 ~~commission;~~

15 (3) ~~for the United States government of~~  
16 ~~property other than used household goods, hazardous or secret~~  
17 ~~materials and sensitive weapons and munitions;~~

18 (4) ~~by motor vehicle of food and other edible~~  
19 ~~products, including edible byproducts but excluding alcoholic~~  
20 ~~beverages and drugs, intended for human consumption,~~  
21 ~~agricultural limestone and other soil conditioners and~~  
22 ~~agricultural fertilizers;~~

23 (5) ~~of shipments weighing five hundred pounds~~  
24 ~~or less if transported in a motor vehicle in which no one~~  
25 ~~package exceeds five hundred pounds; or~~

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1                                   ~~(6) for the United States government of used~~  
2 ~~household goods which is incidental to a pack and crate~~  
3 ~~service on behalf of the department of defense].~~

4                                   F. In determining whether to grant or deny an  
5 application for a certificate, the commission shall not  
6 consider potential economic harm or benefit to other motor  
7 carriers or other potential competitors. No certificate shall  
8 be denied to a person for the sole reason that the issuance of  
9 the certificate will cause economic harm or competition for a  
10 competitor."

11                                   Section 2. Section 65-2-85 NMSA 1978 (being Laws 1981,  
12 Chapter 358, Section 6) is amended to read:

13                                   "65-2-85. CERTIFICATE OF CONVENIENCE AND NECESSITY--  
14 APPLICATION--HEARING AND NOTICE--PROTESTS.--

15                                   A. A person must file an application with the  
16 commission for a certificate [~~of public convenience and~~  
17 ~~necessity~~] to provide transportation as a common motor  
18 carrier. The commission may approve an application in whole  
19 or in part or the application may be denied.

20                                   B. Applications for certificates shall be made in  
21 writing to the commission, shall be verified under oath and  
22 shall be in a form and contain information and be accompanied  
23 by proof of service upon the interested parties as the  
24 commission shall [~~by regulation~~] require by regulation.

25                                   C. No certificate shall be issued by the

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1 commission until after a public hearing held upon at least ten  
2 days' notice to interested parties.

3 D. The commission shall streamline and simplify,  
4 to the maximum extent possible, the process for issuance of  
5 certificates [~~to which the provisions of Paragraph (4) of~~  
6 ~~Subsection G of Section 65-2-84 NMSA 1978 apply~~].

7 E. No common motor carrier of property may protest  
8 an application for a certificate [~~unless:~~

9 (1) ~~it possesses authority to handle, in~~  
10 ~~whole or in part, the traffic for which authority is applied;~~  
11 ~~and~~

12 (2) ~~it is willing and able to provide service~~  
13 ~~that meets the reasonable needs of the shippers involved; and~~

14 (3) ~~it has performed service within the scope~~  
15 ~~of the application during the previous twelve-month period or~~  
16 ~~has, actively and in good faith, solicited service within the~~  
17 ~~scope of the application during such period; or~~

18 (4) ~~it has pending before the commission an~~  
19 ~~application filed prior to the application being considered~~  
20 ~~for substantially the same traffic; or~~

21 (5) ~~the commission grants leave to intervene~~  
22 ~~upon a showing of other interests that are not contrary to the~~  
23 ~~transportation policy set forth in Section 65-2-81 NMSA 1978].~~

24 F. No contract motor carrier of property may  
25 protest an application for a certificate. "