

February 11, 1977

The Natural Resources Committee convened at 10:10 a.m. in room 437 on February 11, 1977, with Chairman Sheldon presiding and all members present except Rep. Hirsch who was excused, for a hearing on the following bills.

HB 609 REP. GARY KIMBLE, the bill's chief sponsor, said this bill is to establish a major facility siting task force and is to prescribe its duties. A copy of his written testimony and some suggested amendments are a part of the record and exhibit 1. He left for the committee's use a booklet "Draft Montana Statewide Siting Study Proposal," by the Department of Natural Resources which will be added to the committee library.

TED DONEY, Department of Natural Resources, spoke next. He said the department has a similar bill, HB 601, which contains no task force; however, if the committee wants one that is fine. He said the task force contains no representative of the owners whose land will be crossed by transmission lines and should also be a federal number on the board. He said the department is in favor of a siting inventory and the task force is a way to do it.

PAT SMITH, Northern Plains Resource Council, spoke next in support. He felt this would allow energy development to occur in an organized fashion. A copy of his testimony is exhibit 2.

CLANCY GORDON, representing self, felt this would encourage industrial parks rather than having industrial sites scattered all over the state, which he felt would conserve energy. He said in our agricultural state there are many areas that would be incompatible to industrial sites, and these should be noted.

Ward Shanahan, Dreyer Bros, Inc., spoke in opposition to the bill. He said their proposed Circle West fertilizer plant would be covered by this. He wanted the language on page 2, line 8 struck "develop criteria to designate those areas of the state unsuitable;" and on lines 22 and 23 "unsuitable areas and preferred site criteria". He said they have to be located where the coal is--and that this is a stop development policy.

Rep. Kimble in his rebuttal said the bill is important as it allows for major public involvement in the process of siting--deciding the areas that are suitable and unsuitable. It would remove the DNR from their dual roll--both developing criteria for siting and then enforcing it. He said under the assumption that there are areas that are unsuitable for siting--otherwise we wouldn't need a siting policy at all. It would be based on a schedule and as the need increases for more facilities more areas will be considered suitable for siting. Also he said there are suitable areas that should be utilized if we are going to have a major facility. He said to have no siting criteria is to have a complete development policy.

HB 431 Rep. Kessler, the chief sponsor was temporarily absent from the committee room testifying on another bill, so

REP. HAL HARPER, the co-sponsor of the bill, said the bill has two main provisions. The first is twelve months prior to application the company must file an intent to file. This would notify the department and public of intent and they will have a chance to react to it. Objections can be checked into prior to the company's making any major investment in the site. Secondly there would be a penalty for false information that is knowingly given.

JOAN MILES, Environmental Information Center, spoke next in support of the bill. A copy of her testimony is exhibit 3.

JOHN ROSS, attorney with Montana Power Co., spoke next in opposition. He said at present a utility has to file an annual long range plan in which it specifies all the facilities it plans to build within the next ten years. So, he said you already have a notice of intent. He said the second part that provides the penalty for knowingly misleading --projecting ahead that far information cannot be precise. He said HB 593 would have DNR annually review their long range plan and within six months submit their analyses of it. He felt HB 533 would better accomplish what this bill was trying to do.

WARD SHANAHAN, Dreyer Bros., stated they oppose the bill for the same reasons stated by Mr. Ross.

GENE PHILLIPS, Pacific Power and Light, said they second the remarks of Mr. Ross.

REP. HARPER in his rebuttal said he was pleased with the remarks of Mr. Ross, and the concurrence of Mr. Phillips and Mr. Shanahan, as it seems they comply with this bill already so they should have no objections to the passage of this bill. He stated under existing law there are no penalty provisions for the one who willfully gives wrong information even if it could be proven. He said Montana is not leading in this particular area, and Montana stands to lose more than any of the four states that have an intent to site law.

Mr. Doney responded to a question from Rep. Burnett that the ten year plan doesn't require a utility to specify a certain site--just the general area. If you don't have a site what do you study?

HB 697 REP. HUENNEKENS, the bill's chief sponsor, said this removes the decision function for the siting act from the Board of Natural Resources and places it with the Public Service Commission. Why? The PSC are elected officials so there would be no question of gubernatorial politics involved. The five members of the PSC are elected from different districts so should be a good representation. The board meets intermittently while the PSC functions continually and would develop a certain amount to expertise. Quite a burden is put on the BNR to demand they make technical decisions without the proper background. Bureaucracy increase--not to speak of as the staff work will continue to be done by the DNR. It will remove the conflict of interest for the DNR as now they will only be the supplier of information and not the formulator of opinion. He said the PSC has not been known for their speedy functioning but time limits in the act will cause them to move a little more speedily.

JOHN L. PETERSON, Montana Power Co., said they have no quarrel with the concept of this bill and support it.

GORDON BOLLINGER, Public Service Commissioner, said he was not there for the commission to encourage putting the siting act under the PSC. But he said he did not oppose it and would let the legislature decide. He said at the present time they are asked for input into the siting act by the BNR. He said, also they do have utilities coming to them to check on building plants and they can't answer one way or the other as they don't have the control.

THOMAS G. SCHNEIDER, Public Service Commissioner, spoke in support. He felt they were in the best position to know the entire economic picture on utilities so the responsibility of deciding on a utility site should be their responsibility.

WARD SHANAHAN, Dreyer Bros., spoke in opposition. He was concerned that now his fertilizer plant would be under the PSC where he felt it didn't belong. He said if Dreyer Bros.'s proposed amendments to HB 661 are adopted they would be removed from this act.

GENE PHILLIPS, Pacific Power and Light, spoke as an opponent. He felt the PSC lacked sufficient help and expertise to handle this. He felt it would cover several things which are not ordinarily covered by the PSC. He didn't feel their project, ASARCO, belonged under the PSC.

TED DONEY, Dept of Nat. Res., said he wasn't speaking really as an opponent. He had tried to poll the feeling of the DNR board members on this--five were out of town, 1 didn't have an opinion being new, and 1 opposed.

REP. HUENNEKENS in his rebuttal said he would just as soon keep Circle West under the siting act. He said having served on the Board of Natural Resources he knew that meeting once a month was not conducive to gathering expertise.

HB 702 REP. HERB HUENNEKENS, the bill's chief sponsor, said this bill will move under the siting act umbrella other major industrial processes. Why? He said he felt in the four years experience we have had in connection with the effects of major industrial processes that on the whole we do need to expand our siting act. He said not only power plants affect society and the environment--all major industrial plants have a strong regional effect. He said Montana will have increased mineral development and we should do something about it now before it is too late. He introduced the next five proponents.

DR. CLANCY GORDON, representing self, spoke as an opponent and a copy of his testimony is exhibit 4.

MARY DONOHOE, a rancher from Nye and a member of many citizens groups including the Stillwater Planning Board and the Northern Plains Resource

Council, said she was speaking today on behalf of the NPRC which she said is not for or against industry but is for the right of citizens to be heard on those matters that affect their lives. She said our society is becoming so complex and involved that we must exist under more regulations. On behalf of the NPRC she strongly recommended support of HB 702.

TERRY WHITESIDE, from Rimini, and appearing as a concerned citizen. He urged the committee to pass the bill as it would enable the citizens to look at the project plans before construction begins.

REV. MICHAEL MOORE, Absarokee, spoke of the responsibility we have to ourselves and each other--healthwise and spiritwise (beautiful areas diminished by improper siting); to the land itself and to the future. He said we must have long lived processes which will insure that the health, spirit and economic stability of the people and land are maintained not just through this generation but so generations beyond ours may have access to all these positive effects. He said the Siting Act as it is doesn't allow enough protection. He urged the support of the committee for this amendment to the Siting Act.

JOHN HEYNEMAN, rancher from Fishtail, said he was here with the assumption that a siting law is the will of the people of Montana. He said the public should have the opportunity to hear debate and comments if their area is going to be affected.

MIKE PICHETTE, Montana Democratic Party, said the current party platform has a recommendation to develop criteria on siting of major industrial plants. The best way to develop such criteria is to put these facilities under this act.

ALBEN T. MYREN, JR., representing self, supported the bill. He said he had a few reservations about placing the responsibility for decisions dealing with the siting of both energy and industrial facilities in the same board; however, he stated his support because it would help to achieve the constitutionally stated goals of the state in sec. 1, section 70-802. He also questioned the \$25 million figure--felt the committee should consider lowering it so as to cover smaller facilities, such as phosphate processing plants, that he said are known to have an adverse environmental impact. A copy of his testimony is exhibit 5.

WARD SHANAHAN, Dreyer Bros., was the first opponent speaker. He enumerated many other industries, like stock yards, that could have an adverse impact on the community. He felt it unfair.

GENE PHILLIPS, ASARCO, was the next opponent speaker. He said ASARCO is a proposed underground copper mine near Troy. He said they must go to many state agencies to get the needed certification now and this would add one more.

NEIL LYNCH, Montana Mining Assoc., said he did not claim to be an expert as he was a stand-in for the regular lobbyist. He felt this act would be discriminatory toward the mining industry. He felt there was no present need for this type of bill due to the legislation on the books. He also questioned whether the state of Montana would have jurisdiction over this. He said the existing law was designed for utility siting.

DON ALLEN, Montana Petroleum Assoc., opposed the bill. He asked why include refineries as the Board of Health covers them now, so what would this do that isn't already done. On page 3, line 19 he objected to the size (\$250,000) of those included.

STEVE WILLIAMS, Anaconda Co., said he agreed with the comments of Mr. Lynch.

In his rebuttal Rep. Huennekens said the primary thing we can give our citizens is allowing them to participate in the decision making process. He said in some of the testimony the testifiers lost sight of the fact that this bill deals with siting only. He said the bill is an answer to a concern expressed by quite a number of people--the siting of conversion and processing plants. Certainly, he said, crushers should be located near the mine but it could be a few miles away and this could make a big difference in its impact. In regard to refineries, he said Continental in Billings sited their refinery in probably the most stupid spot that could have been chosen--due to the prevailing wind and emissions coming over the city.

During questions from the committee. Rep. Bengtson asked what regulations need to be complied with now. Answer was air and water quality both state and federal plus a number of others.

Rep. Sheldon mentioned that while ASARCO has worked with the department to get a good EIS statement other companies might not be as ready to do so on their own. Mr. Phillips said it just made good sense to have a good EIS.

Rep. Quilici asked how many of the proponents had been through a modern concentrator or arbiter plant. One had.

Letters of support for HB 702 were received from:

Tom Kelly, Planner Stillwater County, Exhibit 7.

Wayne Yost, Stillwater Soil and Conservation Dist. Ex 8

Allen Bond, Project Director of MYAPO, exhibit 9

Jack Exley, MD Absarokee Medical Clinic, exhibit 10

Bob Noe, Chairman, Tri-County Planning Board, exhibit 11

David Matovich, Ted Wahl and William Brenkel, County Commissioners of Stillwater County, Exhibit 12

Jack Gribble, Planning Director of Carbon County Planning Officer, Ex 13

Frank Cole, Jr., Chairman, Commissioners of Carbon County, Ex 14

Chairman Sheldon said bills heard this morning will go to Rep. Hirsch's sub. Chairman Sheldon closed the hearing on HB 702 and opened the meeting to an executive session on HB 197.

HOUSE BILL NO. 197

Rep. Quilici told the committee the small riprappers and miners who opposed the bill had been together with the State Department and Lt. Governor Ted Schwinden and had written a bill that would come out as a Senate Natural Resource Committee Bill. He said this bill would not affect them in any way. He read an amendment he felt should be

added which was on page 3, following line 24 to include a new subsection (4) which would say "This act shall not apply to applications filed with the department prior to January 1, 1977, and for which an agreement has been signed, and for so long as it continues, extending the 60 day review period presently contained in section 50-1210."

Rep. Cooney moved that HB 197 as so amended do pass. Rep. Cox seconded the motion. The motion carried with all voting yes except Rep. Davis and Burnett; and Rep. Hirsch and Nathe absent.

Rep. Bengtson reported on a resolution her subcommittee had compiled on energy education with Debbie Schmidt doing the drafting. Copies were sent around for all and a copy is exhibit 6. Chairman Shelden said this would require a 3/4 vote of the committee to make it a committee bill. Rep. Huennekens moved that the committee present this resolution as a committee bill. Motion carried unanimously with all present. (Absent were Hurwitz, Nathe, Hirsch and Burnett.

Meeting adjourned at 12:45.

Respectfully submitted,


ARTHUR H. SHELDEN, Chairman

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