

April 5, 1977

The Natural Resources Committee convened on April 5, 1977, in room 437, at 9 a.m., with Chairman Sheldon presiding and all members present (except Reps. Hirsch, Huennekens and Quilici who were excused) to consider the following bill:

SENATE BILL 324

SENATOR DUNKLE had been granted permission for some closing statements as time had run out when his bill had been heard. He presented some amendments, exhibit 1, for the committee's consideration. He went through the amendments explaining them. He said he would be glad to answer questions, and thanked the committee for their consideration.

During questions Rep. Kessler asked if the applicant would pay for the study. Sen. Dunkle said the applicant would pay for the study but the board has the right to deny the study. Rep. Bengtson asked how the filing fee is determined--will it cover other than the hearing. Sen. Dunkle said with an unregulated product you would have a different concern than with regulated products. Rep. Nathe asked concerning just who is covered by the Major Facility Siting Act--would a tractor plant be covered. Senator Dunkle said everybody with a major facility is covered under this act--and we should separate because of the difference between being regulated and being unregulated. Chairman Sheldon said to be covered by this act it has to be connected with energy of some kind. Rep. Harper questioned if limiting the fee to the board hearing wouldn't tie the department's hands so they would not be able to get information but they would have to make a decision on material given to them by the applicant. This could limit them from filling gaps on their own and would hamper their ability to go out and check. Senator Dunkle felt they would be professional enough to review data and make a decision.

TED DONEY, Dept. of Nat. Res., was asked by the chairman if he had a few comments as Sen. Dunkle had been granted the extra time. Mr. Doney said the amendments are vague and unclear--it raises a question whether the department has the authority to conduct an independent evaluation of the study. He said facilities like hydroelectric and potash are not regulated by the PSC but are now covered by the plant siting act; as well as the fertilizer plant which when completed could well be larger than Colstrip 3 and 4 combined. He said the tractor plant mentioned by Rep. Nathe would not now be covered by this act. He also mentioned no monitoring would be covered by the fee mentioned in this bill.

Rep. Burnett moved Senator Dunkle's amendments be adopted.

Chairman Sheldon said another cloud on this bill is that parts of it are involved in 661 which was killed, so this bill could be thrown out by the Rules Committee.

Rep. Hurwitz questioned if the public wasn't sufficiently protected by all the other acts with which Dreyer Bros. must comply and would keeping them under the Major Facility Siting Act just be duplication.

Rep. Kessler felt there was inherent danger in having the applicant do the study himself. Rep. Metcalf said it was like having the fox fence the chicken coop. He said the amendments put the Department of Natural Resources into a judicial position--deciding if the law fits a certain project or not. He said the law as it now is says what it pertains to. Rep. Burnett felt we would just have a bigger bureaucracy if the state has to make a study of everything. Rep. Bengtson felt there would be problems trying to tie criteria for the Major Facility Siting Act to the Public Service Commission. She felt the proponents were searching for ways to get out from under the Major Facility Siting Act. Rep. Curtiss mentioned Mr. Winsor said there was need for a differentiation for the companies that have to compete in a free market. Rep. Harper said he was against the amendments--he felt it muddled the issue and would restrict the department in performing its job. He felt the amendments were quite substantial. He said the Major Facility Siting Act was not written in half an hour. Rep. Curtiss said she disagrees with Rep. Harper as subsection 6 gives them the authority to overview this and make a determination. She felt the amendments were needed, that the bill as written is too administrative. Rep. Hurwitz also felt if Montana is going to compete with any industry we have to give them some latitude--he said we tend to throw all kinds of impediments in the company's way and make it impossible for them to compete. Rep. Frates said we have a good product and we'll have no trouble getting it developed. He said this coal we have in the ground is like having money in the bank and it does not have to be developed today. If we take the attitude everyone gets everything they want on their own terms we will be doing the future of Montana a big disfavor.

Rep. Burnett's motion to adopt Sen. Dunkle's amendments failed with 8 yes and 8 no and 1 absent (Quilici). The yes votes were Reps. Cox, Curtiss, Davis, Ernst, Burnett, Bengtson, Hurwitz, and Nathe.

Rep. Burnett moved to concur in SB 324 with these amendments: on page 1, lines 21 and 22, following "refineries" to strike "and fertilizer plants"; and on page 2, lines 19 and 20, following "more", to strike "to produce hydrocarbon products or energy in any form for ultimate public use". This last amendment was suggested by Rep. Harper who felt just the first amendment would not keep the fertilizer plant under the Major Facility Siting Act. This motion passed unanimously with Rep. Quilici and Huennekens and Hirsch absent.

Rep. Harper moved a substitute motion of do not concur as amended. He said he objects to the language on page 7 because it ties the hands of the department as the money can only be used for limited things. He said the current fees enable the department to make independent studies, and then to carry out other duties such as monitoring and follow up to make sure these people are complying with the act. He felt it was proper to put this cost on the utilities as the customers who will eventually absorb the cost are not necessarily Montana customers and the people who use should pay.

Rep. Burnett said the industry is a tax paying industry and employs many people and should have some flexibility. To make his point that industry was not being overly dampened by the laws, Rep. Harper quoted these figures: in 1974--12 million tons of coal were mined and in 1975--22 million tons; revenue doubled in that one year. He said the damper has not been put on--instead of trying to weaken the laws we should be trying to clarify them.

Question was called and the motion of Do Not Concur As Amended carried with 10 yes, 6 no (Burnett, Cox, Curtiss, Davis, Ernst, Hurwitz), 1 absent (Quilici). Reps. Huennekens and Hirsch had left written votes with the chairman to be cast against the bill.

Meeting adjourned at 10 a.m.

Respectfully submitted,


ARTHUR H. SHELDEN, Chairman

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