

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

February 12, 1977

The fifteenth meeting of the Natural Resources Committee was called to order by Senator Elmer Flynn, Chairman, at 9:30 a. m. on the above date in Room 405 of the State Capitol Building.

ROLL CALL: Upon roll call all members were present.

Mr. Larry Weinberg, Staff Attorney of the Legislative Council, was also present.

CONSIDERATION OF SB 247: An Act to delete the option of agencies to charge fees for the preparation of environmental impact statements; deleting the required filing fee for an application under the Major Facility Siting Act.

At this time the proponents of SB 247 were heard.

Senator Harold Dover, representing District 24 and Chief Sponsor of SB 247, explained the bill. He stated that this bill is presented to correct several serious problems that are seen interfering with sound government practice and practical economics of the business community and the State. It is not the purpose of this legislation to weaken, in any way, the high standards enacted by the Montana Legislature. It is merely to adjust the payment of certain fees to be in harmony with the purpose of the regulation and to be in harmony with Montana's need to create the necessary jobs and income for its citizens. (See Attachments #1 and #2.)

Mr. Tom Winsor, representing the Montana Chamber of Commerce, stated that we are not the only state with industrial dislocation. The capital crisis is real and growing in the U. S. We respectfully request that you remove these fees. In explaining exhibits distributed to Committee members Mr. Winsor added, that the situation is even worse than government statistics would indicate. (See Attachment #3.)

Mr. Ward Shanahan, Attorney in Helena, stated that he was not necessarily speaking as a proponent or opponent. He said, let us make some provisions in the law that the state agencies have to cooperate with one another. Let us recognize that the way this fee schedule is set up it doesn't bear any relationship of the work to do.

Mr. Peter Jackson, of the Western Environmental Trade Association, stated that he was a strong proponent of SB 247.

At this time, the opponents of SB 247 were heard.

Mr. Steve Brown, Chief Counsel for the Health Department, and the Governor's Representative on the Environmental Quality Council, stated that the Executive Branch doesn't disagree with what Senator Dover is trying to do. But, this bill will not in any way help to accomplish those objectives. This bill is not going to stop a single one of those problems. If you wipe out this filing fee I guarantee you it is going to be challenged on MEPA Law. If you can get the Committee to earmark 2.5 million dollars we will go along with this. The challenge that we have made is that we need to comply with the law. If you are going to require state agencies to perform functions then we are going to have to have the money from somewhere. Within the confines of a budget there always have to be choices made. You can't get a man who is making forty-thousand dollars a year to come to work for state government for fifteen-thousand dollars. So we have got problems. Problems because of requirements placed upon us by law. All I ask is that you consider what you want. I think this bill will destroy the laws that you as a Legislator have entitled us to do.

In closing, Mr. Brown added, that the filing fee of MEPA has been used judiciously and cautiously.

Mr. Leo Berry, from the Department of State Lands, stated that the part of the bill that concerns him most is Section 4 where you cancel MEPA fees. When we obtain fee money we hire one individual to coordinate the impact statement. The fee becomes due to the agency upon receipt of the application. I think there are many benefits which we can point out as a result of impact statements. If we repeal MEPA we have to come up with 2.5 million dollars to enable the departments to do their job. I question the problem and whether the problem is being accomplished in the bill.

Senator Tom Hager, representing District 30, stated that he had served as Chairman of the Environmental Quality Council for two years. I am an opponent but I think this bill is a good idea. It is a good idea but it is not practical, it can't work. I think the Environmental Impact Statement has to be done and it has to be done in the way the people trust. If the state does it people are more willing to accept what a state agency has done than what industry has done. He stated, in summary, that it can't work. The fee system I don't think has been overused. I would urge you to do not pass SB 247.

Brief discussion followed.

Senator Jergeson stated that the tables distributed by Mr. Winsor were for 1973. Are these figures substantially the same now.

Mr. Winsor said, actually it has gotten worse. Our capital outlet is worse than Swedens. In Montana we don't have very good facilities for gathering this information.

Senator Galt said, under this bill the Department of Natural Resources gets the fee under the environmental impact statement.

Mr. Ted Doney, of the Department of Natural Resources, answered that only the Utility Siting part.

Senator Galt asked, if there are two fees.

Mr. Doney replied, only one.

Senator Roskie stated, that he was concerned about the question of accepting outside money. I kind of stick up for the state agencies.

Senator Galt wondered, when you receive this money that was quoted to Fish and Game, does that money apply to these respective companies' fees.

Mr. Berry replied, yes. We credit them for the amount given to the department.

Mr. Brown stated, that they had collected \$80,000 from Anaconda Aluminum on variance statute and they were returning \$22,000 in a year. We are trying to be as prompt as possible in returning the money.

DISPOSITION OF SB 302: Motion was made by Senator Roskie and seconded by Senator Manley that SB 302 DO PASS. Upon roll call vote, seven voting yes, and one voting no, the motion carried. (See attached roll call vote.)

DISPOSITION OF SB 241 and SB 257: Senator Roskie stated that the Sub-Committee had met, along with Senator Towe, Don Allen, and two Geophysical Exploration people and Mr. Jim Mockler, and that they had met for three to four hours. They had an extended discussion about amendments. They reached some agreement but not complete agreement on SB 241 and SB 257. He said, that Senator Smith had to leave the meeting for a Finance and Claims meeting.

Mr. Don Allen, Executive Director of the Montana Petroleum Association in Billings, explained the proposed amendments to SB 241. (See Attachment #4.)

Motion was then made by Senator Roskie and seconded by Senator Manley that we accept the amendments to Senate Bill 241. Motion carried. (See attached standing committee report.)

Motion was made by Senator Roskie and seconded by Senator Dover that SB 241 AS AMENDED DO PASS. Motion carried.

Motion was then made by Senator Galt and seconded by Senator Dover that SB 257 DO NOT PASS. Motion carried.

It was agreed to defer action on Senate Bill 247 at this meeting.

ANNOUNCEMENT: It was decided to hold a night meeting on Wednesday, February 16, 1977 at 7:00 p. m.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:00 a. m.

Elmer Flynn
SENATOR ELMER FLYNN, CHAIRMAN

ROLL CALL

NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

2-12-77
Date

SENATE NATURAL RESOURCES COMMITTEE

Senate
BILL 247

VISITORS' REGISTER

DATE 2-12-77

Please note bill no.

(check one)

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: BRACE HAGEN DATE: 2/12/11

ADDRESS: 212 Palace

PHONE: 443-5376

REPRESENTING WHOM? Dept. State Cands

APPEARING ON WHICH PROPOSAL: SB 247

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENTS: _____

DATE: 2/12/77

ADDRESS: _____

PHONE: 3374

REPRESENTING WHOM? State Lands

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Steve Smith DATE: 2/2

DATE: 2/12

ADDRESS: Box 215 Capitol Station, W. Va.

PHONE: 449-3742

REPRESENTING WHOM? EGC

APPEARING ON WHICH PROPOSAL: SB 302, 247

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS : _____

NAME: Peter Jackson DATE: 2-12

DATE: 2 - 12

ADDRESS: Yellow Mt.

PHONE: 8443-5541

REPRESENTING WHOM? WEFA

APPEARING ON WHICH PROPOSAL: 53 247

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Tom Winter DATE: 2/12/77

ADDRESS: 110 Vail Ave

PHONE: 442-2405

REPRESENTING WHOM? Leonard Blaustein

APPEARING ON WHICH PROPOSAL: SB 247

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: John Hector DATE: 2-12-77

DATE: 2-12-77

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Se / F

APPEARING ON WHICH PROPOSAL: 247

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

STANDING COMMITTEE REPORT

February 12

19 77

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **302**

Respectfully report as follows: That **SENATE** Bill No. **302**

DO PASS

SENATE COMMITTEE NATURAL RESOURCES

Date February 12, 1977 Bill No. 302 Time 10:45 a. m.

NAME	YES	NO
Flynn, Elmer, Chairman	✓	
Roskie, George, Vice-Chairman	✓	
Devine, John	✓	
Dover, Harold	✓	
Galt, Jack	✓	
Jergeson, Greg		✓
Manley, John	✓	
Smith, Ed		✓

Beverly Braut
Secretary

Elmer Flynn
Chairman

Motion: Motion was made by Senator Roskie and seconded by Senator Manley that Senate Bill 302 Do Pass. Roll call vote taken and 7 voting yes and one voting no, the motion carried.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 12.....

19 77

MR. PRESIDENT.....

We, your committee on NATURAL RESOURCES.....

having had under consideration SENATE..... Bill No. 257.....

Respectfully report as follows: That SENATE..... Bill No. 257.....

DO NOT PASS

DO PASS



..... SENATOR ELMER FLYNN.....

Chairman.

STANDING COMMITTEE REPORT

February 12, 1977

19

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

SENATE

having had under consideration Bill No. 241

Respectfully report as follows: That SENATE Bill No. 241,

introduced bill, be amended as follows:

1. Amend title, line 6.

Following: "HOLES"; "

Insert: "ESTABLISHING ADDITIONAL FILING REQUIREMENTS; PROVIDING FOR ENFORCEMENT BY THE BOARD OF OIL AND GAS CONSERVATION; PROVIDING FOR INFORMATION TO BE GIVEN TO THE SURFACE USER;"

2. Amend page 2, section 1, line 4.

Following: "as"

Insert: "shall be specified by the board of oil and gas conservation"

3. Amend page 2, section 1, line 24.

Following: line 23

Insert: "Section 2. There is a new R.C.M. section that reads as follows: Additional Requirements. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

~~DO NOT PASS~~

Page 2
Sen. Bill 241

February 12, 1977

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this act, the board shall take necessary action to assure compliance.

(4) Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished:

(a) the name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(b) evidence of a valid permit to engage in geophysical exploration;

(c) name and address of the company insuring the geophysical firm;

(d) the number of the bond required in [Section 1 of this act];

(e) a description of the surface areas where the planned geophysical activity will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned geophysical activity."

Renumber: Subsequent section

4. Amend page 3, section 2, line 6.

Following: "violation of"

Insert: "the plugging requirements of"

AND AS SO AMENDED, DO PASS


SENATOR ELMER FLYNN, CHAIRMAN

SENATE BILL 247 DOVER, ET AL

This bill is presented to correct several serious problems that are seen interfering with sound government practice and practical economics of the business community and the State. These problems are:

1. The excessive length of time in the hearing process under the major facilities siting act.
2. The adversary relationship between State agencies and private enterprise.
3. The capital crisis effecting business.
4. Montana's Unemployment problem.
5. The unstable funding of the State agencies involved.

It is not the purpose of this legislation to weaken, in any way, the high standards enacted by the Montana Legislature. It is merely to adjust the payment of certain fees to be in harmony with the purpose of the regulation and to be in harmony with Montana's need to create the necessary jobs and income for its citizens.

PURPOSE OF ENVIRONMENTAL AND SITING REGULATION

First, let's examine the purpose of environmental regulation and plant siting. Are these regulations there for the benefit of the State or of the individual business? The answer is quite clear, the legislature has established these regulations for the benefit it perceives to the whole of the people of the State--and obviously, not for the industries involved. They certainly don't help the economy of the companies involved.

However, the effect of the fees assessed under the laws we are discussing is not to the whole state. In the case of utilities, the burden falls first upon the company--which must locate the capital to finance the development of new energy facilities and the cost of the fees,

Tuesday, Sept. 21, 1976 Star-Tribune, Casper, Wyo.—13

Siting Act helps ready communities

By JOAN BARRON

Capital Bureau Chief

CHEYENNE — Some five to seven mines in the Powder River Basin have the same aggregate social economic impact of a large power plant.

But because the Industrial Siting Act covers facilities costing \$50 million or more, none of the mines is under the law's permit process, noted Industrial Siting Office Director Dr. Blaine Dinger.

During an interview, Dinger said the question is not whether the cost figure in the 1975 law is too high or too low but whether an industrial facility creates community impact.

Some minimal cost ventures have substantial impact on communities because of their location while others over the \$50 million limit could be situated in an area where there would be no community problems, he pointed out.

Wyoming is one of 38 states with siting laws on the books.

But Dinger said Wyoming's Act is probably as comprehensive as any especially in the socio-economic area.

He said it has already proved effective in the case of the Wheatland power plant because siting regulations compelled Basin Electric to take a lead role in getting the community prepared for the impact to come.

Dinger, however, added that the law needs changing because the 40-60 day review period before a hearing is too short. He said his staff has had to work nights and weekends to prepare for hearings because of the timetable in the law.

Also, the public has less time to review an application because the law specifies that 20 days elapse from the time of filing before public notice is given.

Dinger said that is "patently unfair" because the company has had years to prepare an application.

He said a three-to-four month period to prepare for hearing would be better.

Dinger said he personally feels that large mining operations should go through the permit process. The 1976 sessions saw an aborted attempt to exempt draglines from the cost of a coal mining operation which would have excluded the large strip mine ventures from the siting permit process.

Dinger said this issue may be discussed in the next session. He added that there may be some misconceptions about state statutes governing mining developments. The mining land reclamation law, he pointed out, does not take into account the number of workers involved in a project.

Since it opened, Dinger's office has received two major applications — for the Wheatland power plant and the Jim Bridger power plant unit No. 4 in Sweetwater County — plus two applications for certificates of insufficient jurisdiction, petitions for exemptions from the siting permit process.

Work before the staff of four includes a review of the transmission lines for the Basin Electric project and that firm's plan for a socio-economic

program.

Dinger said he welcomed the breather because the major applications came in as soon as the office opened last year.

Asked about other applications expected, Dinger said he had been contacted about a major trona expansion but was not at liberty to divulge the identity of the potential application.

He said he has also had discussions with coal and uranium mining interests whose projects would come close to the \$50 million statutory limit. Dinger explained that the figure is adjusted to 1975 dollars, figuring a ten per cent

increase cost factor.

Although Panhandle Eastern Pipeline Co. has postponed its plans for a coal gasification plant in the Douglas area because of financing, Dinger said he has no doubt that in the future one will be built in Wyoming.

When the legislature passed the 1975 law, it failed to appropriate any money for its administration. Gov. Ed Herschler gave the office \$25,000 in seed money and \$19,000 of that sum was returned, Dinger said.

The 1976 legislature allocated the office a \$479,473 budget for the 1976-78 biennium and eight positions.

The appropriation is to keep the office running when no application fees are coming in. Those fees seem high — a maximum of \$100,000 — but, Dinger said his office spent \$104,000 processing Basin Electric's application. The transcript for eight-and-one-half days of hearings cost \$20,000 alone, he said.

Meanwhile a select committee appointed by the governor is studying some means to consolidate the permit process for industry.

Dinger said he feels that no requirements are being imposed that industry can't meet and still compete in the market place. "But I think we can cut down the number of times a project is placed in jeopardy without adversely affecting the public interest," he said.



DR. BLAINE DINGER
'Patently unfair'



(Attachment #3)

NEWS

ASARCO Incorporated
120 Broadway
New York, N.Y. 10005

FOR IMMEDIATE RELEASE

June 25, 1975

NEW YORK, N.Y. - ASARCO Incorporated announced today that it has temporarily suspended all design and engineering work on its proposed 180,000-ton-per-year electrolytic zinc plant. A potential site for this new zinc plant was purchased by Asarco in 1973 near Stephensport, Kentucky.

Asarco President Ralph L. Hennebach said that the decision to delay this project was made because of depressed economic conditions, sharply escalated capital costs, and the difficulty of obtaining capital under current conditions for a project of this magnitude. An investment in excess of \$200 million would be required for the zinc refinery and an associated sulfuric acid plant, he stated.

"Asarco's capital expenditures for expansion and modernization projects have been at record levels in 1974 and 1975 to date," Mr. Hennebach said. "With depressed metal markets, increased refined metal inventories and the on-going substantial capital requirements at existing Asarco plants to meet environmental and OSHA (Occupational Safety and Health Administration) regulations, planned outlays

PR-75-6-12

(more)

PROPOSED AMENDMENTS

RE: SENATE BILL 241

SPONSOR: SENATOR SMITH

1. Page 2, Section 1, line 4.

Following: "as"

Insert: "shall be specified by the Board of Oil and Gas Conservation"

2. Page 2, Section 1, line 23.

Following: line 23

Insert: "Section 2. Additional Requirements: (1) The County Clerk and Recorder of the County in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the Board of Oil and Gas Conservation; (2) The Board shall notify the County Clerk and Recorder of said county if the person, firm or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state; (3) If the Board of Oil and Gas Conservation determines that a person, firm or corporation has violated any provisions of this act, the Board shall take necessary action to assure compliance; (4) Before commencing geophysical activity, the person, firm or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished -- (a) The name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's; (b) Evidence of a valid permit to engage in geophysical exploration; (c) Name and address of the company insuring the geophysical firm; (d) The number of the bond required in Section 1 of this act; (e) A description of the surface areas where the planned geophysical activity will take place; (f) Anticipated need, if any, to obtain water from the surface user during planned geophysical activity."

Renumber: subsequent section

3. Page 3, Section 2, line 6.

Following: "of"

Insert: "the plugging requirements"