

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
February 9, 1979

The committee went into executive session following the regular meeting in room 436 of the Capitol Building at 10:00 a.m. on Friday, February 9, 1979. All members were present except Representative Eudaily, still in the hospital.

HOUSE BILL NO. 455: Representative Keedy moved "do not pass". The motion carried with Representatives Daily and Scully voting "no".

HOUSE BILL NO. 452: Representative Keyser asked if the amendments they had talked about were included in the prepared amendments.

Representative Ramirez said he felt that the certificate should be issued in such a way that it would be subject to the siting act. This amendment is not consistent with the memorandum. There was further discussion about the amendments.

Representative Scully: We have to try and clarify what it is we want to do here. I think we have four options, which I will explain, as I see it and then see if you agree.

1. It appears to me that we intend to short-circuit the appeal process we have now. There would be no decision on the appeals in the court. We would pass the bill as it is now. The certificate would go forward based upon that.

2. Amend the bill. No decision on appeals but amend it so that the control was in the Board of Natural Resources and the certificate would be enforceable.

3. Would not affect the decision now before the court but would stop any collateral appeals. We could mend the bill as set forth in the memo. It does not affect appeals that are presently before the court but we would short-circuit any collateral appeal pending their decision.

4. That we kill the bill and let the court take the course its going to take.

Representative Conroy said the important thing is the one we address in the bill. Representative Lory asked whether there is any precedent in the legislature stopping an appeal already in process.

Representative Day asked what would happen if we pass this bill and the certificate is in force and the court rules otherwise, would it take effect. Representative Ramirez said it would go back to the board and their decision would be final. Mr. Peterson, the attorney, said, I think that that would have that effect. I think the certificate would be validated but there are other issues in the court. The validity of the certificate does not affect the procedures of the court. Whether or not the Board of Health can condition the certificate still has to be addressed by the Supreme Court. The validity of the certificate would not affect the court decision. I don't know how you would address that in this amendment in this bill. As for option number four, I just have to be against it.

Chairman Scully asked Pat Smith, of the Northern Resource Counsel if those were the options as he saw them. I did discuss the amendments with Mr. Graybill and they still feel there may be some serious constitutional questions. Also, there are the important procedural questions before the Supreme Court.

Chairman Scully asked Ted Doney, of the Board of Natural Resources if those were the options as he saw them. I have only one comment, but it seems to me that if the certificate is valid that will effectively take the appeals out from the court. If there are procedural problems in the hearing that will send it back.

Representative Kemmis asked, if we decide that the certificate is valid, isn't that what the court is deciding. There was much discussion about the validity of the certificate. Chairman Scully threw out the question, what happens to that argument then if we pass an amendment to the siting act. There was discussion about this.

Representative Keyser said he did not understand and he wanted it explained a little more. Chairman Scully, stated that within the certificate are the conditions for the implementation of the certificate. In addition to that on appeal there are procedural issues as to the application of the act itself and how to go ahead.

There was discussion about when the issues would be decided, and Mr. Peterson said he did not know when, but that there had been voluminous records. Mr. Ramirez said it might be seven or eight months, since that was the average.

Representative Conroy moved the amendments that had been submitted.

He spoke to his motion.

Representative Kemmis said, I think the Northern Plains appeal will be decided long before this takes effect. I feel this will only hold it up and cause further litigation. He spoke at some length to this.

There was general discussion about Judge Bennetts decision and whether it could be appealed.

Representative Holmes, what we see here is the separation of powers. Does the legislature want to set a precedent of when we don't like what the court is trying to do then we would be circumventing what they decide.

Representative Kemmis said that the appeal that is there now has already been briefed and argued. We would have to start over again, with district court and appeal and then to the Supreme Court. The issue that is there now is about to be decided.

Representative Lory asked, if we take option three, isn't that an appealable decision also. Representative Kemmis said there might be issues that would be raised there too, but I can't say that there would be appeals up that route.

There was discussion about the conditions set by the Board of Health.

Representative Scully, "The motion before us is, plug in the amendments, take the certificate and have the company abide by the certificate."

Representative Kemmis, I feel that we are voting on the general sense of the amendments. Representative Scully asked if everyone was ready for the question. The motion that the bill would be amended carried by the following vote; 14 yes, 4 no and 1 absent.

There was discussion about the intent of the bill as amended.

Representative Conroy moved that the amendments be accepted as presented. The motion carried with Representatives Keedy and Anderson voting "no"

Representative Conroy moved "do pass as amended".

Representative Kemmis stated again, I think we are passing a bill here that will almost certainly result in litigation. I oppose the motion.

Representative Day spoke and said he opposed it also.

Representative Anderson said that he opposed the motion and asked if they could draft a committee bill that would do what they wanted it to, by using option number three. Whereupon Representative Lory asked if they could write a committee bill that would stop that action.

Representative Roth asked if it were true that it would be faster to let the court proceed as it was doing and kill the bill.

Representative Scully said that it probably would be faster in his opinion and that they could draft a committee bill that would do what they wanted it to.

Mr. Scully said he had some comments to make, and that he felt it was unfortunate that the type of press generated by this bill had been directed toward Representative Conroy. I think this committee took the genuine approach to this bill and tried to treat it fairly and with sincerity. Several other members commented in this same vein.

The question was called and the vote was a tie as follows by roll call:

Yes:	Conroy	Curtiss	No:	Anderson	Day
	Daily	Iverson		Holmes	Keedy
	Keyser	Pavlovich		Kemmis	Lory
	Roth	Seifert		Rosenthal	Uhde
	Teague			Scully	

Representative Eudaily was absent and did not vote.

Representative Scully said we can now take the bill out of committee on a tie vote with no recommendation, and take it to the floor on that basis. Representative Eudaily will be here tomorrow but I don't think he should be forced into that position of breaking the vote.

I would much rather take it to the floor right now. There was discussion whether this should be done.

Representative Keedy said that in the interest of fairness, he would change his vote to get it on the floor in deference to Representative Conroy. He moved to reconsider the vote. The motion carried with Representatives Lory and Day voting "no".

Representative Day said that he would have made a motion to use option three and draft a committee bill but that Representative Keedy had spoken first. There was discussion whether to reconsider again. It was decided not to.

The motion then before the committee was to reconsider "do pass as amended". The motion carried with a vote of 10 to 8.

Representative Lory asked if this would still give them the option of bringing in number three with a committee bill. Whereupon Representative Conroy said that this bill was going to the floor. It was mentioned that this route might still be available to the committee pending whatever happened to the bill on the House floor.

HOUSE BILL NO. 505: Representative Seifert moved "do pass" and the motion carried with Representatives Day and Lory voting "no".

HOUSE BILL NO. 517: Representative Roth moved "do pass". Representative Keedy explained the difference between negligent homicide and deliberate homicide. There was discussion led by Representative Daily. The question was called and the vote was 10 to 6 by roll call. The motion failed. By roll call vote the motion "do not pass" carried, also 10 to 6.

HOUSE BILL NO. 539: Representative Uhde moved to amend and the motion carried with the vote unanimous. (copy attached) Representative Keyser moved "do not pass as amended". The motion failed by roll call 7 to 9. The motion carried "do pass as amended", also by a vote of 9 to 7.

The meeting adjourned at 11:35 a.m.



John P. Scully, Chairman