



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 30, 2004

TO Representative Berger

FROM Nicole Novotny, Associate Research Analyst

SUBJECT Wyoming Industrial Siting Act: Creation and Exemptions

Questions:

- 1) What is the history of the Wyoming Industrial Siting Act?
- 2) What circumstances led up to the exemption of oil and gas industries in the Wyoming Industrial Siting Act?

Answers:

- 1) **The Wyoming Industrial Siting Act was established in 1975 through HB 125A.**

In 1974, the Legislature considered HB 18A. This bill, named the Industrial Development Information and Siting Act (originally drafted W.S. 35-502.57 through 35-502.76), was drafted to establish the "Environmental Quality Council" within the Department of Environmental Quality to oversee the construction of large industrial facilities in the state of Wyoming. The main purpose of the Council was to execute an application/permit procedure that would help protect the natural environment and "quality of life" within the state of Wyoming. This legislation was all encompassing; superceding all potentially conflicting laws of the state, and, the bill did not grant any exemptions to preexisting industrial facilities. Upon adjournment of the 42nd Legislative Session, HB 18A was not adopted.

In 1975, HB 18A was rewritten and resubmitted to the 43rd State Legislature under new sponsorship as HB 125. Eventually, HB 125 was amended in the Mines, Minerals, and Industrial Development Committee and resubmitted once again as a substitute bill, HB 125A. The passing of HB 125A created a permanent state office of industrial siting administration within the Governor's Office, established detailed stipulations relating to the membership composition and schedule of the "Industrial Siting Council" (formerly "Environmental Quality Council"), and further enhanced the permit application, hearing, and appeal procedures executed by the council.

HB 125A also established new criteria for waivers of permits, exemptions, and information required by the Council (originally W.S. 35-502.94; currently W.S. 35-12-119). In accordance with this new criteria, facilities under construction, in operation, or defined by W.S. 35-502.76 as of March 1, 1975 were not required to apply for a permit from the Council. This criteria also declared state facilities, local government units/agencies, construction of railroads, electric transmission lines (not exceeding 115,000 volts), oil and gas pipelines, coal slurry pipelines, natural gas pipelines, construction and operation of oil and gas production, and drilling and field processing facilities exempt from the required application and permit procedures of the Industrial Siting Council.

*Since 1975, a handful of amendments have been made to the Industrial Siting Act, but the aforementioned efforts stand to be the most critical.

*Due to re-numbering, the Industrial Development and Siting Act is now found under W.S. 35-12-101 through 35-12-119.

2) The statute exempting the oil and gas industries from the Industrial Siting Act was added to HB 125 while it was in the Mines, Minerals, and Industrial Development Committee in 1975.

In researching the evolution of the Wyoming Industrial Development and Siting Act, it is clear that many of the major amendments to HB 125 occurred within the Mines, Minerals, and Industrial Development Standing Committee. The original HB 125 did not provide any exemptions to the application, permit, and waiver procedures overseen by the Industrial Siting Council. One can conclude that the exemption statute (W.S. 35-12-119) that currently exists was added by the Mines, Minerals, and Industrial Development Committee while it was in Committee from January 15th through February 10th, 1975. Unfortunately, since standing committee minutes are not recorded while the Wyoming Legislature is in session, there is little information available to determine exactly why the exemptions statute (W.S. 35-12-119) was incorporated into the act.

Prior to the legislative session of 1975, the Mines, Minerals, and Industrial Development Committee did solicit a great deal of information from public agencies and private industries with regard to the working draft of HB 18A. In April of 1974, the Committee held a public hearing through which representatives from the oil and gas industries submitted written statements in response to HB 18A. Among the statements provided by The Carter Oil Company, the Sun Oil Company, Pacific Power & Light Company, The Rocky Mountain Oil and Gas Association, and The Panhandle Eastern Pipe Line Company issues raised include time constraints, market efficiency, and conflicts of legal jurisdiction. These companies felt that HB 18A would impede their progress and hinder future business endeavors because the oil and gas industries are dependent upon a constantly changing market and often cannot engage in a great deal of long-term planning. Furthermore, these companies argued that because, as legislated, HB 18A would supercede all other laws and regulations concerning industrial siting, conflicts would arise since oil and gas industries must seek approval from several other government and regulatory bodies while they are in operation.

A year after the adoption of HB 125A, Jack L. Van Baalen authored an article about the Industrial Siting Act in the University of Wyoming College of Law *Land and Water Law Review* (Vol. XI, No. 1, pp. 27-101, 1976). Van Baalen emphasized the fact that, as written, HB 125A arbitrarily defined what constitutes an "industrial facility." Though the act defined an "industrial facility" as "any energy generating and conversion plant" {W.S. 35-502.76 (c)(i)}, and, "any industrial facility with an estimated construction cost of at least fifty million dollars (\$50,000,000.00)" {W.S. 35-502.76 (c)(ii)}, Van Baalen argued that these definitions are ambiguous because they do not specify what constitutes a "construction cost" and subsection (c) (ii) does not specifically state that the industries costing \$50 million in construction are energy generating/conversion related. {Currently, an "industrial facility" is defined in the Industrial Development and Siting Act under W.S. 35-12-102 (B)(vii), due to re-numbering.}

In this review, Van Baalen further discusses how this initial ambiguity will cause jurisdictional confusion among the government and the affected industries as the Wyoming Industrial Siting Council seeks to minimize adverse social and economic impacts of industrial development through the legislated processes. Interestingly, despite Van Baalen's review of the law and thorough consideration of the

definition of an "industrial facility," no mention is made of the aforementioned exemption statute within this publication.

In the absence of recorded intent, to gain further insight into the history of HB 18A, the adoption of HB 125A, and the addition of W.S. 35-12-119 in the Industrial Siting Act, would require personal contact with individuals associated with the drafting of HB 18 and HB 125, former LSO staff, or, the following members of the Mines, Minerals, and Industrial Development Committee in 1974 and 1975.

House Bill 18 Sponsors: Rex O. Arney, Alfred T. Graham, Fenworth M. Downing, and William C. Holland

House Bill 125 Sponsors: Rex O. Arney, Alan K. Simpson, Lawrence J. Hunter, Catherine M. Parks, William C. Holland, William C. Edwards, and Rodger McDaniel

Mines, Minerals, and Industrial Development Committee Members (1975):

Dean T. Prosser, Chairman, Warren A. Morton, J. Leonard Graham, Catherine M. Parks, William C. Holland, Edness Kimball Wilkins, William C. Edwards, Lawrence J. Hunter, and Daniel L. Kinnaman.

If you would like our staff to contact any of the above individuals to obtain their recollections and *impressions* of the exemption statute, the LSO General Research staff can do so at your request. As always, if our staff can be of additional help please do not hesitate to contact our office at (307) 777-7881.