

August 2020

How House Bill 666 And Grass Roots Democracy Won Subdivision Reform For Montana

John Vincent

Follow this and additional works at: <https://scholarship.law.umt.edu/plrlr>



Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Animal Law Commons](#), [Cultural Heritage Law Commons](#), [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Indian and Aboriginal Law Commons](#), [Land Use Law Commons](#), [Law and Race Commons](#), [Natural Resources Law Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Science and Technology Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Vincent, John (2020) "How House Bill 666 And Grass Roots Democracy Won Subdivision Reform For Montana," *Public Land & Resources Law Review*. Vol. 43 , Article 9.

Available at: <https://scholarship.law.umt.edu/plrlr/vol43/iss1/9>

This Article is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Public Land & Resources Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

HOW HOUSE BILL 666 AND GRASS ROOTS DEMOCRACY WON SUBDIVISION REFORM FOR MONTANA

John Vincent

The 1975 Legislature. Eleventh Legislative Day. A freshman legislator, I'm sitting at my desk on the floor of the House trying to make sense of it all. My seat-mate and mentor, Herb Huennenkens, taps me on the shoulder: "Phil Tawney wants to see you." "Who?" "Phil Tawney." "Who's Phil Tawney?" "Phil's a lobbyist for EIC."¹ "What's the EIC?" "The Environmental Information Center." "Do you know what they want?" "John, come with me, I'll introduce you to Phil."

It didn't take long to find out what Phil and EIC wanted; make that, "needed." A chief sponsor! And not for just any bill, but a bill Robin Tawney, Governor Tom Judge, and many others in the legislature and the press later said was the 1975 legislative session's most controversial bill.

HB 666 was drafted by EIC to put some real teeth in the Montana Subdivision and Platting Act. As one observer put it later, "[I]n 1975, approval of any Montana subdivision was virtually guaranteed." The existing Montana Subdivision and Platting Act was fatally flawed. County commissions had no objective legal standards or criteria with which to determine and decide whether a subdivision should, in the public interest, be approved, conditionally approved, or denied. *Carte Blanche* approval of subdivisions in Montana was a given. Major reform was needed before more agricultural land, wildlife, and wildlife habitat were lost through the casual, virtually *pro forma* approval of subdivisions by county commissioners who, far too often, were serving the best interests of developers rather than the best interests of the public.

HB 666 would require commissioners to establish "findings of fact" on eight criteria when considering a subdivision application: (1) the need for the subdivision, (2) expressed public opinion, (3) effects on agriculture, (4) effects on local services, (5) effects on taxation, (6) effects on the natural environment, (7) effects on wildlife and wildlife habitat, and (8) effects on public health and safety. In short, approval, conditional approval, or denial would be determined by findings of fact which specifically and legally demonstrated that the decision was in the public interest.

1. Originally called the Environmental Information Center ("EIC"), the organization changed its name to the Montana Environmental Information Center ("MEIC") in 1980.

Having recently transitioned from a volunteer effort to a high-powered, full-time, staffed environmental organization, EIC was just getting started. But the participants had done enough volunteer work and lobbying in the 1973 and 1974 legislative sessions to become more than just a little politically astute. In drafting HB 666, EIC recognized that a strictly environmental subdivision reform bill had little chance of success. By including subdivision impacts on local services, taxation, and public health and safety, along with expressed public opinion and a finding of need, EIC leaders created truly comprehensive subdivision reform legislation. They also helped defuse anti-environment political opposition and gave local citizens a real say in the future of their county. The result was a smart, comprehensive, and expertly crafted piece of legislation.

Getting HB 666 passed and signed into law would prove not only a difficult and challenging legislative task, but a major, ground-breaking, even precedent-setting test of grassroots democracy in Montana. HB 666 was the most heavily lobbied bill of the session, almost all of the effort from the opposition. Only a spirited statewide effort spearheaded by EIC could get it through the legislature and signed into law by Democratic Governor Tom Judge. And the governor's signature was anything but certain since the governor had "let his dislike for the legislation circulate throughout the development community and legislative halls." It would be a fight to the end.

The opposition? A "Who's Who" of development community special interests and their local government "friends." This group included the Montana Realtors Association, Montana Association of Registered Land Surveyors, Montana Association of County Commissioners, Montana League of Cities and Towns, Montana Technical Council, Montana Farm Bureau, and Planning Division of the Department of Intergovernmental Relations—Community Affairs (executive branch opposition).

In my first meeting with Phil, he explained that EIC had tried to find an experienced legislator to sponsor the bill but had come up empty. And I was too inexperienced to ask why! (One observer said it wasn't worth introducing a bill that was "too controversial . . . bad politics . . . wouldn't pass—and if it did pass, it would be vetoed by the governor anyway.")

That might have been part of the unwillingness to be a chief sponsor, but over 650 bills had been introduced by the eleventh legislative day and I suspect more seasoned legislators had already taken on enough of a legislative workload to keep them occupied. Sixty-seven Democrats had been elected to the House in the watershed 1974 Watergate election along with 30 in the Senate and it was no secret that Democratic legislators loved to legislate.

In any case, I was more than a little apprehensive about sponsoring the bill. As a freshman with just eleven legislative days under my belt I was still finding my way. I didn't know a lick about Montana subdivision law, had yet to gain any standing with my legislative peers, and was just beginning to acquaint myself with the ins and outs of the legislative process. I also had two other bills ready to go—one (with Dorothy Bradley, my first co-sponsor) to require reclamation of lands and waters affected by underground mining, and the other to cap credit card interest rates at 10 percent. This seemed like more than enough to handle.

But with assurances from Phil and Robin that they would guide me every step of the way, that EIC had a highly motivated grassroots citizens lobby, and that a sophisticated phone tree campaign was ready to go, I agreed to carry the bill. I didn't have the foggiest idea of what lay ahead.

HB 666's journey through the legislature—from its introduction to Governor Judge's signature—involved 73 legislative days, 44 legislative actions including 24 floor votes—11 in the House and 13 in the Senate. It had quite a wild ride in House and Senate committees, a conference committee, and a free conference committee.

One observer summed it up this way: "The legislative history of HB 666 was fraught with controversy, close calls and political intrigue . . . intense floor debates, extremely close votes, the defeat of numerous amendments introduced to weaken the bill, and conference and free conference committee showdowns." Two amendatory vetoes offered by Governor Judge were accepted by the House but rejected by the Senate. A free conference committee appointed to consider the governor's amendatory vetoes was appointed and dissolved ON THE SAME LEGISLATIVE DAY, with no agreement.

The truth be known, my place in the legislative history of HB 666 pales in comparison to that of EIC, its membership, its citizens lobbying effort, and a pitch perfect phone tree offensive. Not once did I lobby a House or Senate member. I didn't need to. Simply put, I carried the bill, but EIC carried the load. Phil Tawney did the heavy lifting, and Robin Tawney and Torian Donahoe rode shotgun.

At every turn EIC was there. My floor and standing committee speeches were in large part drafted by Phil. He prepped me on likely questions from committee members along with those he knew would come up during floor debate. He got me ready for conference committee and free conference committee meetings where I would be up against seasoned legislators determined to weaken the bill. And . . . that phone tree just kept humming!

Two sidebars: We were preparing for conference committee. Phil tells me, "Senator Roskie will come after you. He's a realtor." "What do

I do?" "Whatever he says, just say no." So that's what I did. After the senator made his pitch I looked him in the eye and said, "No." Not a word more. None needed. That was it. Phil had nailed it. We had the votes!

The free conference committee on the governor's amendatory veto was dissolved on the 85th legislative day. That evening and throughout the 86th legislative day we heard rumblings that Republicans in the senate were contacting some house members in a last-ditch effort to have the bill returned to the senate. Because the bill had narrowly passed the Senate, it was crystal clear why Republican senators, along with a few Democrats, wanted it back . . . one last gasp attempt to kill it.

Late that night Speaker Pat McKittrick and EIC decided they had had enough. The bill had been signed by Senate President Gordon McOmber but still needed the speaker's signature. I'm not sure who came up with the idea, but after Speaker McKittrick signed the bill, he called Governor Judge, just before midnight, and asked if he would drive over from the governor's residence to his office in the capitol and sign it. The governor accepted the speaker's invitation. ("Surrendered" might be a better expression, since Tom had opposed HB 666 for most of its 73-day legislative life.) Apparently, he too, had enough! (To this day I'm convinced the governor's change of heart on the bill was the result, yet once again, of EIC's unbeatable phone tree campaign.)

Then, for the first and possibly last time in Montana legislative history, the speaker handed a live bill to its chief sponsor to take down to the governor's office for his signature.

I remember it was a long walk, alone in dark hallways. I could envision a senator bolting from a doorway and ripping the bill right out of my hands. Of course, that didn't happen.

But this happened! Governor Judge met me at his office . . . in his pajamas! A few words, a signature, and I was on my way back through the dark halls to the speaker's office, no longer with a bill in hand, but a STATE LAW!

EIC had prevailed, the State of Montana had won, and a freshman legislator had learned lessons that would serve him well over the next 15 years and seven legislative sessions.