

Comments on Substitute Senate Bill 250.

By Randy Cunningham

I wish to oppose the approval of Substitute Senate Bill 250 for the following reasons.

The reasons I give are based on my own past as an activist, and as an author who writes about activism.

(1) It is unnecessary.

The Ohio Revised Code already speaks to issues of trespassing, vandalism and criminal mischief. The penalties for these offenses are already appropriate. Ohio has never seen demonstrations and protests of the type that the law is allegedly designed to address. We have seen some blockades, tree sits and “lock downs” as they are called in the activist lexicon but have not encountered the vandalism and arson that was practiced by the now defunct Earth Liberation Front. The lurid fantasies of some Ohio Senate members who see an “eco-terrorist” behind every bush, and who seek to link Ohio protesters to dark forces of foreign terrorism is ludicrous. Speaking as an activist myself, I would characterize Ohio activists as a pretty mild-mannered bunch, who are generally law abiding and not given to the theatrics of uber-militancy common in other locales. So, we already have adequate laws to deal with some of the violations of the law that may happen during protests, protests that are usually excruciatingly polite and law abiding and well within the rights of the protesters granted by the Ohio and US constitutions. Substitute Senate Bill 250 is a law designed to deal with a non-existent problem.

(2) Substitute SB 250 is a bill designed to intimidate and silence dissent and protest.

There is nothing in SB 250 that explicitly bans or sanctions protests or demonstrations. It is much too sophisticated for that. It is what I call a “shut up and shut down” bill all the same. There are many ways to skin an activist, and SB 250 is designed to do that. It’s definition of “critical infrastructure facilities” is so all encompassing that it could put any of us leaving the State Capitol building under its jurisdiction. It’s provisions for civil penalties for organizations that support protests that **may** result in violations of laws dealing with vandalism or trespass amount to guilt by association. Organizations sponsoring protests or demonstrations cannot be responsible for the behavior of people who attend such events. The organizations may have trained marshals or peace keepers at the event, but those who attend are not vetted beforehand. They do not have to apply for permission to attend the event. Out of any one hundred people who you may randomly select off any street corner, you may have at least a few that could cause trouble or have a tenuous relationship to reality. If the State of Ohio is ready to apply these standards to protests and demonstrations, then the state should apply similar standards to music concerts, and sporting events – especially celebrations of championships or victories by the home team. Celebrations of Ohio State victories are notorious for arson, drunkenness, and rioting. In the eyes of this bill a protester locking themselves down to construction equipment, or committing trespass is a dangerous felon and/or a terrorist, but a drunken frat rat after an Ohio State football game who turns over a police car or throw rocks and bottles at police is just an example of boys being boys. There is no reason to ruin his life with the label of a felon. In fact, he may grow up to be a State Senator or Representative.

(3) How intimidation works.

Senate Bill 250 is designed to intimidate opponents of the “critical infrastructure facilities” i.e. anyone who objects to the activities of the fracking and pipeline industries in Ohio. An excellent example of how intimidation works is to look at the impact of a similar law in Louisiana. It came into effect during a major fight that has been on going to stop the Bayou Bridge Pipe Line. As soon as it came into effect, law enforcement began to make arrests of protesters – even to the point of arresting protesters when they were not technically trespassing and violating the law. Next activists with the organizations opposing the pipeline began to receive calls from supporters asking if it was safe to come to meetings or attend rallies, or if they would be arrested.

Finally, regardless of the technicalities of a law such as SB 250, the fact of the matter is that if police want to arrest you, they will arrest you. A law such as SB 250 will be their license to act with impunity. The true objective is not conviction of whatever charges are brought. In many if not most cases of arrests in protest activities, the charges will eventually be dropped.

The true objective is harassment. There is nothing simple about being arrested. A person arrested may be kept in jail long enough to jeopardize their employment. They may have to obtain legal representation with all its costs. They may have to arrange child care if they have small children. While all this is going on, they cannot participate in any organizational activity. And in many cases the organizations they belong to will be preoccupied with raising bail and legal expenses for its arrested members. Then there is grim prospect of laws such as SB 250, that you can be arrested and charged with a life wrecking felony charge. If

you are not charged with a felony but are convicted with a misdemeanor the court may forbid you from participating in any further activities for a set amount of time.

In many cases it is in the interest of the charging authorities to not pursue a conviction, because that may result in an appeal and an appeal will test the law in the courts – a test the law may not survive. A conviction may back fire on the prosecutors, since in the type of cases we are discussing the public may see a rich and arrogant company using the law to stomp ordinary citizens into the ground. Again, in the case of the arrests in Louisiana, one prosecuting attorney has been unenthusiastic about pursuing convictions because he does not want to appear to be the lackey of the oil companies.

Regardless of all these caveats, it should be apparent to all that their main goal of laws such as SB 250 is to intimidate opponents of companies such as Energy Transfer Partners into silence. Which makes it a classic “shut up and shut down” law.

(4) The corruption of law enforcement.

Several problems have appeared in recent years in cases where law enforcement officers come into conflict with protesters or civil unrest that has caused unease among the general public, journalists and other observers of contemporary society.

One problem is the militarization of the police. We saw in Ferguson, Missouri and at Standing Rock, police operations looked like they were going on in Kandahar, Afghanistan or Mosul in Iraq.

Then there is the issue of private security firms whose personnel – again – look as if they are on combat duty in the Middle East. In these cases, there is not even the pretense of public control or accountability. These security companies are nothing more than domestic

mercenaries. They are hired guns of the fracking and pipeline companies. That is trouble enough. The trouble increases when local police punch out on the time clock at the police station, and punch in at the private security companies. Especially when local police are employed by poor jurisdictions that cannot pay top salaries. Which describes the situation in many communities where fracking and pipeline activities are happening. This leads to confusion on the part of the public. Where do the police loyalties reside? With the public they work for during the day, or Energy Transfer Partners and its security services when the second shift begins. In the Louisiana case it is hard to tell where Energy Transfer Partners with its security personnel leaves off, and public law enforcement agencies begin. In truth they are one and the same.

Finally, back to the issue of organizational responsibilities and activist culpability for violations of the new super charged penalties of SB 250. The problem is a problem that has plagued American dissent since the labor wars of the 19th century. The problem of agents provocateurs. These are undercover police or security agency personnel whose job is not just to monitor and report on dissident groups, but to urge these groups to break the law or commit acts of vandalism or even worse. During the anti-Vietnam war peace movement, if a person at a demonstration or in an organization was starting to do or say something crazy, they were frequently confronted and asked what their badge number was. It does not take much imagination to see how SB 250 is a welcome mat for such activities. If the protesters do not give you an excuse to arrest them for felonies or subject their organizations to ruinous civil penalties, then don't worry. Your friendly local agent provocateur will build your case for you.

(5) It won't work.

Trying to shut people up about a problem that you have no intention of solving is a fool's errand. Since the founding of the Republic, the powerful have been passing laws such as SB 250 in the hope of shutting up those without power who have some authentic reasons to complain. From slavery to women's rights, to labor rights, to mad foreign military adventures it is built into the genes of Americans to protest and ask for redress of grievances. We are not a cowed and timorous people. We have repeatedly rebelled against perceived injustices, regardless of the legal consequences. The industries that have inspired and that will benefit from this legislation have rap sheets of crimes against people and the environment that would win the respect of a gangster like the late John Gotti. Energy Transfer Partners has a devil may care attitude towards the integrity of its pipelines, which have leaked throughout the country and throughout Ohio. One of the major jobs of the Ohio EPA is writing up violations against Energy Transfer Partners.

Substitute Senate Bill 250 will not prevent or clean up the oil spills that are an inherent part of pipelines. It will not restore farm fields to their original productive state, or marshes and bodies of water to their pristine condition. It will not protect the public or industry workers from air pollution coming from fracking wells, compressor stations, refineries or plastic manufacturing plants. It will not pay the bills for the cancers and other illnesses that are a by-product of the industry it hopes to protect. It will not comfort or support the survivors of industry victims.

The only thing it will do is tell industry critics to shut up if they know what is good for them. And we will not listen. We will not shut up. We will find new ways to respond. We will not give up.

This legislation is a waste of time and those who serve the public in the State House should not be wasting their time or the public's time on this mean and nasty little bill. Vote down Substitute Senate Bill 250 and be grateful that it is gone and will be of no further embarrassment.