

HOUSE BILL NO. 591

INTRODUCED BY D. HIMMELBERGER

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; MODIFYING THE DEFINITION OF "CERTIFICATE"; MODIFYING THE INFORMATION REQUIREMENTS FOR APPLICATIONS; ELIMINATING THE REQUIREMENT THAT A COPY OF AN APPLICATION BE SENT TO OTHER LOCAL, STATE, AND FEDERAL GOVERNMENTAL ENTITIES; MODIFYING PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT THE DETERMINATION OF ANY ADDITIONAL FILING FEE BE REVIEWED BY THE APPROPRIATE LEGISLATIVE COMMITTEE; REVISING THE FILING FEE SCALE; REDUCING THE CERTAIN TIME REQUIREMENTS THROUGHOUT OF THE SITING LAWS; QUALIFYING THE USE OF MONTANA ENVIRONMENTAL POLICY ACT DOCUMENTS; REDUCING THE FEES REQUIRED FOR CERTIFICATE RENEWALS; REVISING THE DEPARTMENT'S DECISION PROCESS FOR RENEWING A CERTIFICATE; INCLUDING ECONOMIC IMPORTANCE AND BENEFITS IN DETERMINING THE SIGNIFICANCE OF A FACILITY'S IMPACT; ~~ELIMINATING THE DETERMINATION OF A BASIS OF NEED FOR TRANSMISSION AND PIPELINE FACILITIES~~; REVISING THE DEPARTMENT'S APPROVAL CRITERIA FOR CERTAIN FACILITIES; CLARIFYING REQUIREMENTS FOR COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 7-1-111, 69-3-1205, 75-20-102, 75-20-104, 75-20-201, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-225, 75-20-226, 75-20-231, 75-20-232, 75-20-301, 75-20-303, 85-2-124, 85-2-607, 85-15-107, AND 90-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-1-111, MCA, is amended to read:

**"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

- (1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;
- (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective



1 bargaining for public employees, unemployment compensation, or workers' compensation), except that  
2 subject to those provisions, it may exercise any power of a public employer with regard to its employees;

3 (3) any power that applies to or affects the public school system, except that a local unit may  
4 impose an assessment reasonably related to the cost of any service or special benefit provided by the unit  
5 and shall exercise any power that it is required by law to exercise regarding the public school system;

6 (4) any power that prohibits the grant or denial of a certificate of public convenience and  
7 necessity;

8 (5) any power that establishes a rate or price otherwise determined by a state agency;

9 (6) any power that applies to or affects any determination of the department of environmental  
10 quality with regard to any mining plan, permit, or contract;

11 (7) any power that applies to or affects any determination by the department of environmental  
12 quality with regard to a certificate of ~~environmental compatibility and public need~~ compliance;

13 (8) any power that defines as an offense conduct made criminal by state statute, that defines an  
14 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500,  
15 6 months' imprisonment, or both, except as specifically authorized by statute;

16 (9) any power that applies to or affects the right to keep or bear arms, except that a local  
17 government has the power to regulate the carrying of concealed weapons;

18 (10) any power that applies to or affects a public employee's pension or retirement rights as  
19 established by state law, except that a local government may establish additional pension or retirement  
20 systems;

21 (11) any power that applies to or affects the standards of professional or occupational competence  
22 established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a  
23 profession or occupation;

24 (12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish  
25 and wildlife)."

26

27 **Section 2.** Section 69-3-1205, MCA, is amended to read:

28 **"69-3-1205. Public comment.** (1) The commission shall conduct a public meeting for the purpose  
29 of receiving comment on a plan. The commission or the department of public service regulation may  
30 comment on the plan. A comment by the commission or the department may not be construed as

1 preapproval by the commission of rate treatment for any proposed resource.

2 (2) The department of environmental quality:

3 (a) shall review a plan and comment on the need for new resources, the alternatives evaluated  
4 to meet the need, the environmental implications of the resource choices, and other related issues that it  
5 considers important. The department shall coordinate and deliver all comments from other executive  
6 branch agencies.

7 (b) may use a plan in the development of studies for a specific energy facility for which an  
8 application for a certificate of ~~environmental compatibility and public need~~ compliance is submitted under  
9 Title 75, chapter 20.

10 (3) The consumer counsel shall review and may comment on a plan."  
11

11

12 **Section 3.** Section 75-20-102, MCA, is amended to read:

13 **"75-20-102. Policy and legislative findings.** (1) It is the constitutionally declared policy of this  
14 state to maintain and improve a clean and healthful environment for present and future generations, to  
15 protect the environmental life-support system from degradation and prevent unreasonable depletion and  
16 degradation of natural resources, and to provide for administration and enforcement to attain these  
17 objectives.

18 (2) It is also constitutionally declared in the state of Montana that the inalienable rights of the  
19 citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty,  
20 to acquire, possess and protect property, and to seek safety, health, and happiness in all lawful ways.  
21 The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life  
22 for all Montanans.

23 ~~(2)(3) The legislature finds that the construction of additional power or energy conversion facilities~~  
24 ~~may be necessary to meet the increasing need for electricity, energy, and other products and that these~~  
25 ~~facilities have an effect on the environment, an impact on population concentration, and an effect on the~~  
26 ~~welfare of the citizens of this state occur in the state of Montana because these facilities provide critically~~  
27 ~~needed electricity, energy, and other products. Power and energy conversion facilities may impact the~~  
28 ~~environment, population concentrations, and the common good of the citizens of the state.~~ Therefore, it  
29 is necessary to ensure that the location, construction, and operation of power and energy conversion  
30 facilities ~~will not produce unacceptable adverse effects on the environment and upon the citizens of this~~

1 ~~state by providing~~ is in compliance with state law and that a power or energy conversion facility may not  
 2 be constructed or operated within this state without a certificate of ~~environmental compatibility~~ compliance  
 3 acquired pursuant to this chapter.

4 ~~(3)~~(4) The legislature also finds that it is the purpose of this chapter to:

5 (a) ensure protection of the state's environmental resources, including but not limited to air, water,  
 6 animals, plants, and soils;

7 (b) ensure consideration of socioeconomic impacts;

8 (c) provide citizens with the opportunity to participate in facility siting decisions; and

9 (d) establish a coordinated and efficient method for the processing of all authorizations required  
 10 for regulated facilities under this chapter."

11

12 **Section 4.** Section 75-20-104, MCA, is amended to read:

13 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following  
 14 definitions apply:

15 (1) "Addition thereto" means the installation of new machinery and equipment that would  
 16 significantly change the conditions under which the facility is operated.

17 (2) "Application" means an application for a certificate submitted in accordance with this chapter  
 18 and the rules adopted under this chapter.

19 (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,  
 20 diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or  
 21 equipment associated with the production or delivery of the energy form or product produced by a facility,  
 22 except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less  
 23 in inside diameter.

24 (4) "Board" means the board of environmental review provided for in 2-15-3502.

25 (5) "Certificate" means the certificate of ~~environmental compatibility~~ compliance issued by the  
 26 department under this chapter that is required for the construction or operation of a facility.

27 (6) "Commence to construct" means:

28 (a) any clearing of land, excavation, construction, or other action that would affect the  
 29 environment of the site or route of a facility but does not mean changes needed for temporary use of sites  
 30 or routes for nonutility purposes or uses in securing geological data, including necessary borings to

1 ascertain foundation conditions;

2 (b) the fracturing of underground formations by any means if the activity is related to the possible  
3 future development of a gasification facility or a facility employing geothermal resources but does not  
4 include the gathering of geological data by boring of test holes or other underground exploration,  
5 investigation, or experimentation;

6 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or  
7 rights-of-way upon or over which a facility may be constructed;

8 (d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d),  
9 including upgrading to a design capacity covered by subsection (8)(c), except that the term does not  
10 include normal maintenance or repair of an existing facility.

11 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

12 (8) "Facility" means:

13 (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip  
14 and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed  
15 for or capable of:

16 (i) generating 250 megawatts of electricity or more or any addition thereto, except pollution  
17 control facilities approved by the department and added to an existing plant;

18 (ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto,  
19 except pollution control facilities approved by the department and added to an existing plant;

20 (iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition  
21 thereto, except pollution control facilities approved by the department and added to an existing plant;

22 (iv) enriching uranium minerals or any addition thereto; or

23 (v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or  
24 any addition thereto;

25 (b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts  
26 that would be defined in subsection (8)(a):

27 (i) emitting 300 tons a year of particulate matter at 10 microns or less;

28 (ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not  
29 employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title  
30 75, chapter 2;

- 1 (iii) directly affecting:
- 2 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;
- 3 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;
- 4 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
- 5 to 16 U.S.C. 1531, et seq.; or
- 6 (D) one of the following exclusion areas:
- 7 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;
- 8 (II) national primitive areas;
- 9 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;
- 10 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
- 11 et seq.; or
- 12 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or
- 13 (iv) that would require a permanent workforce greater than 300 workers;
- 14 (c) each electric transmission line and associated facilities of a design capacity of more than 69
- 15 kilovolts, except that the term:
- 16 (i) does not include an electric transmission line and associated facilities of a design capacity of
- 17 230 kilovolts or less and 10 miles or less in length; and
- 18 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
- 19 but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way
- 20 agreements or options for a right-of-way from more than 75% of the owners who collectively own more
- 21 than 75% of the property along the centerline;
- 22 (d) except pipelines within the boundaries of the state that are used exclusively for the irrigation
- 23 of agricultural crops, each pipeline, whether partially or wholly within the state, greater than 17 inches in
- 24 inside diameter and 30 miles in length, and associated facilities;
- 25 (e) any use of geothermal resources, including the use of underground space in existence or to
- 26 be created, for the creation, use, or conversion of energy, designed for or capable of producing
- 27 geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except
- 28 pollution control facilities approved by the department and added to an existing plant;
- 29 (f) any underground in situ gasification of coal; or
- 30 (g) an energy-related project for which the department has granted a petition pursuant to

1 75-20-201(5).

2 (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company,  
3 cooperative, association, government subdivision, government agency, local government, or other  
4 organization or entity.

5 (10) "Transmission substation" means any structure, device, or equipment assemblage, commonly  
6 located and designed for voltage regulation, circuit protection, or switching necessary for the construction  
7 or operation of a proposed transmission line.

8 (11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,  
9 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

10

11 **Section 5.** Section 75-20-201, MCA, is amended to read:

12 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**  
13 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in  
14 operation on January 1, 1973, a person may not commence to construct a facility in the state without first  
15 applying for and obtaining a certificate of ~~environmental compatibility~~ compliance issued with respect to  
16 the facility by the department.

17 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or  
18 maintained except in conformity with the certificate and any terms, conditions, and modifications  
19 contained within the certification.

20 (3) A certificate may only be issued pursuant to this chapter.

21 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the  
22 recommendation to the applicant and may not issue the certificate until the recommendation is approved  
23 by a majority of the voters in a statewide election called by initiative or referendum according to the laws  
24 of this state.

25 (5) A person that proposes to construct an energy-related project that is not defined as a facility  
26 pursuant to 75-20-104(8) may petition the department to review the energy-related project under the  
27 provisions of this chapter.

28 (6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and  
29 to all facilities over which an agency of the federal government has jurisdiction."

30

1           **Section 6.** Section 75-20-211, MCA, is amended to read:

2           **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant  
3 shall file with the department an application for a certificate under this chapter and for the permits required  
4 under the laws administered by the department in the form that is required under applicable rules,  
5 containing the following information:

6           (i) a description of the proposed location and of the facility to be built;

7           (ii) a summary of any preexisting studies that have been made of the ~~environmental~~ impact of the  
8 facility;

9           (iii) for facilities defined in 75-20-104(8)(c) and (8)(d), a statement ~~explaining the need for the~~  
10 ~~facility,~~ containing a description of reasonable alternate locations for the facility, a general description of  
11 the comparative merits and detriments of each location submitted, and a statement of the reasons why  
12 the proposed location is best suited for the facility;

13           (iv) (A) for facilities as defined in 75-20-104(8)(c) and (8)(d), baseline data for the primary and  
14 reasonable alternate locations; or

15           (B) for facilities as defined in 75-20-104(8)(a), (8)(b), (8)(e), and (8)(f), baseline data for the  
16 proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for  
17 siting the facility;

18           (v) at the applicant's option, an environmental study plan to satisfy the requirements of this  
19 chapter; and

20           (vi) other information that the applicant considers relevant or that the department by order or rule  
21 may require.

22           (b) ~~A~~ If a copy or copies of the studies referred to in subsection (1)(a)(ii) ~~must be~~ are filed with  
23 the department, ~~if ordered, and the copy or copies~~ must be available for public inspection.

24           (2) An application may consist of an application for two or more facilities in combination that are  
25 physically and directly attached to each other and are operationally a single operating entity.

26           ~~(3) An application must be accompanied by proof of service of a copy of the application on the~~  
27 ~~chief executive officer of each unit of local government, county commissioner, city or county planning~~  
28 ~~boards, and federal agencies charged with the duty of protecting the environment or of planning land use~~  
29 ~~in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be~~  
30 ~~located and on the following state government agencies:~~

- 1 ~~\_\_\_\_\_ (a) environmental quality council;~~  
 2 ~~\_\_\_\_\_ (b) department of public service regulation;~~  
 3 ~~\_\_\_\_\_ (c) department of fish, wildlife, and parks;~~  
 4 ~~\_\_\_\_\_ (d) department of natural resources and conservation;~~  
 5 ~~\_\_\_\_\_ (e) department of commerce;~~  
 6 ~~\_\_\_\_\_ (f) department of transportation.~~

7 ~~(4)~~(3) The copy of the application must be accompanied by a notice specifying the date on or  
 8 about which the application is to be filed.

9 ~~(5)~~(4) An application must also be accompanied by proof that public notice of the application was  
 10 given to persons residing in the ~~area~~ county in which any portion of the proposed facility is proposed or  
 11 is alternatively proposed to be located, by publication of a summary of the application in those newspapers  
 12 that will substantially inform those persons of the application."  
 13

14 **Section 7.** Section 75-20-213, MCA, is amended to read:

15 **"75-20-213. Supplemental material -- amendments.** (1) An application for an amendment of an  
 16 application or a certificate must be in the form and contain the information that the department by rule or  
 17 by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) ~~through (5)~~ and  
 18 (4).

19 (2) An application may be amended by an applicant any time prior to the department's  
 20 recommendation. If the proposed amendment is such that it prevents the department or the agencies listed  
 21 in 75-20-216(6) from carrying out their duties and responsibilities under this chapter, the department may  
 22 require additional filing fees ~~as the department determines necessary, or the department may require a new~~  
 23 application and filing fee. The department shall determine any additional filing fee amount, subject to  
 24 review and comment by the appropriate legislative interim committee, to specifically cover any necessary  
 25 costs incurred by the department or the agencies listed in 75-20-216(6) as a result of the amended  
 26 application.

27 (3) The applicant shall submit supplemental material in a timely manner as requested by the  
 28 department or as offered by the applicant to explain, support, or provide the detail with respect to an item  
 29 described in the original application, without filing an application for an amendment. The department's  
 30 determination as to whether information is supplemental or whether an application for amendment is

1 required is conclusive."

2

3 **Section 8.** Section 75-20-215, MCA, is amended to read:

4 **"75-20-215. Filing fee -- accountability -- refund -- use.** (1) (a) A filing fee must be deposited in  
5 the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this  
6 chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the  
7 department's estimated costs of processing the application under this chapter. The filing fee may not  
8 exceed the following scale based upon the estimated cost of the facility:

9 (i) 4% of any estimated cost up to \$1 million; plus

10 (ii) ~~1% 0.25%~~ 1% of any estimated cost over \$1 million and up to ~~\$20~~ \$5 million; plus

11 (iii) ~~0.5% 0.125%~~ 0.8% of any estimated cost over ~~\$20~~ \$5 million and up to ~~\$100~~ \$10 million;

12 plus

13 (iv) 0.5% OF ANY ESTIMATED COST OVER \$10 MILLION AND UP TO \$20 MILLION; PLUS

14 (v) 0.25% OF ANY ESTIMATED COST OVER \$20 MILLION AND UP TO \$100 MILLION; PLUS

15 (vi) 0.125% OF ANY ESTIMATED COST OVER \$100 MILLION AND UP TO \$500 MILLION; PLUS

16 (vii) 0.05% OF ANY ESTIMATED COST OVER \$500 MILLION AND UP TO \$1 BILLION; PLUS

17 ~~—— (iv) 0.25% 0.05% of any amount of estimated cost over \$100 million and up to \$300 million \$1~~  
18 ~~billion; plus~~

19 ~~(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus~~

20 ~~(vi)(v)(viii) 0.05%~~ 0.025% of any amount of estimated cost over \$1 billion.

21 (b) The department may allow in its discretion a credit against the fee payable under this section  
22 for the development of information or providing of services required under this chapter or required for  
23 preparation of an environmental impact statement or assessment under the Montana or national  
24 environmental policy acts. The applicant may submit the information to the department, together with an  
25 accounting of the expenses incurred in preparing the information. The department shall evaluate the  
26 applicability, validity, and usefulness of the data and determine the amount that may be credited against  
27 the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time  
28 be reduced if the department determines that it is necessary to carry out its responsibilities under this  
29 chapter.

30 (2) (a) The department may contract with an applicant for the development of information,

1 provision of services, and payment of fees required under this chapter. The contract may continue an  
 2 agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must  
 3 be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section,  
 4 the revenue derived from the filing fee must be sufficient to enable the department, the board, and the  
 5 agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may  
 6 amend a contract to require additional payments for necessary expenses up to the limits set forth in  
 7 subsection (1)(a) upon 30 days' notice to the applicant. ~~The department and applicant may enter into a~~  
 8 ~~contract that exceeds the scale provided in subsection (1)(a).~~

9 (b) If a contract is not entered into, the applicant shall pay the filing fee in installments in  
 10 accordance with a schedule of installments developed by the department and reviewed by the appropriate  
 11 legislative interim committee, provided that an installment may not exceed 20% of the total filing fee  
 12 provided for in subsection (1).

13 (3) The estimated cost of upgrading an existing transmission substation may not be included in  
 14 the estimated cost of a proposed facility for the purpose of calculating a filing fee.

15 (4) If an application consists of a combination of two or more facilities, the filing fee must be  
 16 based on the total estimated cost of the combined facilities.

17 (5) The applicant is entitled to an accounting of money expended and to a refund with interest at  
 18 the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its  
 19 responsibilities under this chapter. A refund must be made after all administrative and judicial remedies  
 20 have been exhausted by all parties to the certification proceedings.

21 (6) The revenue derived from filing fees must be used by the department in compiling the  
 22 information required for rendering a decision on a certificate and for carrying out its and the board's other  
 23 necessary and essential responsibilities under this chapter."  
 24

25 **Section 9.** Section 75-20-216, MCA, is amended to read:

26 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

27 (1) After receipt of an application, the department shall within ~~60~~ 30 days notify the applicant in writing  
 28 that:

29 (a) the application is in compliance and is accepted as complete; or

30 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these

1 deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant  
2 in writing that the application is in compliance and is accepted as complete.

3 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and  
4 this section, the department shall commence an ~~intensive study and~~ evaluation of the proposed facility and  
5 its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order,  
6 certification, or permit as provided in subsection (3). The department shall use, to the extent that it  
7 considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled  
8 by a state or federal agency.

9 (3) Except as provided for in 75-20-231, the department shall issue within ~~1 year 6 months~~ 1 YEAR  
10 following the date of acceptance of an application any decision, opinion, order, certification, or permit  
11 required under the laws, other than those contained in this part, administered by the department. A  
12 decision, opinion, order, certification, or permit, with or without conditions, must be made under those  
13 laws. Nevertheless, the department retains authority to make the determination required under  
14 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site  
15 selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules  
16 adopted by the department, the department shall provide an opportunity for public review and comment.

17 (4) Except as provided in 75-20-231, within ~~1 year 6 months~~ 1 YEAR following acceptance of an  
18 application for a facility, the department shall issue a report that must contain the department's studies,  
19 evaluations, recommendations, other pertinent documents resulting from its study and evaluation, ~~and an~~  
20 An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy  
21 Act, ~~if any~~ may be included in the department's findings if compelling evidence indicates that adverse  
22 environmental impacts are likely to result due to the construction and operation of the proposed facility.  
23 If the application is for a combination of two or more facilities, the department shall issue its report within  
24 the greater of the lengths of time provided for in this subsection for either of the facilities.

25 (5) For projects subject to joint review by the department and a federal land management agency,  
26 the department's certification decision may be timed to correspond to the record of decision issued by the  
27 participating federal agency.

28 (6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and  
29 conservation; revenue; and public service regulation shall report to the department information relating to  
30 the impact of the proposed site on each department's area of expertise. The report may include opinions

1 as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds  
 2 obtained from filing fees to the departments making reports to reimburse them for the costs of compiling  
 3 information and issuing the required report."

4

5 **Section 10.** Section 75-20-225, MCA, is amended to read:

6 **"75-20-225. Certificate renewal -- application -- contents -- filing fee.** (1) A certificate holder for  
 7 a facility, as defined in 75-20-104(8)(a)(i) or (8)(b), may apply for renewal of a certificate prior to the  
 8 certificate lapsing.

9 (2) An applicant for a renewal of a certificate shall file with the department an application in the  
 10 form that the board requires by rule.

11 (3) An application for renewal of a certificate must include updated information on the matters  
 12 listed in 75-20-211(1)(a) that have changed since the original application and other information that the  
 13 board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iii) and (1)(a)(iv) for the  
 14 alternate locations must be updated only if the board determines that within the certified location  
 15 significant changes have occurred to warrant a review of alternate locations.

16 (4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3)  
 17 ~~through (5) and (4).~~

18 (5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in  
 19 accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the  
 20 original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

21 (a) ~~0.125%~~ 0.025% of any estimated cost up to \$300 million; plus

22 (b) ~~0.063%~~ 0.020% of any estimated cost over \$300 million."

23

24 **Section 11.** Section 75-20-226, MCA, is amended to read:

25 **"75-20-226. Renewal study -- renewal hearing -- decision.** (1) Upon receipt of a completed  
 26 application for renewal of a certificate, the department shall evaluate the updated information and any  
 27 significant changes in alternatives, technology, baseline environment, and the environmental impacts of  
 28 a facility that have taken place since the original study performed in granting the certificate, considering  
 29 the applicable criteria listed in 75-20-301 and the original department findings and certificate conditions.

30 (2) The department, within ~~4~~ 5 months of acceptance of a complete renewal application, shall

1 complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion,  
2 order, certification, or permit must be used as part of its decisionmaking process under subsections (3),  
3 (5), and (6) of this section.

4 (3) Within ~~42~~ 6 months following acceptance of a complete application for renewal of a certificate,  
5 the department shall issue a report. This report must contain the department's studies, evaluations,  
6 recommendations, and other pertinent documents resulting from its study and evaluation and an updated  
7 environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The  
8 department's report must be directed to the question of whether the original department findings and  
9 conditions have been or need to be altered as a result of any significant changes in alternatives,  
10 technology, baseline environment, or environmental impact since issuance of the certificate, considering  
11 the applicable criteria listed in 75-20-301.

12 (4) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and  
13 conservation; revenue; and public service regulation ~~shall~~ may report to the department information relating  
14 to the impact of the proposed site on each department's area of responsibility. The report may include  
15 opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained  
16 from filing fees to the departments making reports to reimburse them for the cost of compiling information  
17 and issuing the required reports.

18 (5) Within ~~45~~ 30 days after completion of the report pursuant to 75-20-226, the department shall  
19 make complete findings, issue an opinion, and render a decision upon the record, either granting or denying  
20 the renewal application or renewing the certificate with such changes in the terms and conditions as the  
21 board considers appropriate.

22 (6) The department ~~may not~~ shall renew a certificate either as proposed by the applicant or as  
23 modified by the department unless it finds and determines that:

24 (a) the applicant has willfully failed to comply with the conditions of the previously issued  
25 certificate or that an alternative technology exists that is reasonable, significant, and cost-effective and  
26 should therefore be considered; or

27 (b) significant changes in the criteria in 75-20-301 have occurred and should be considered in the  
28 renewal process; considering any significant changes in need, alternatives, technology, baseline  
29 environment, and environmental impact, have been met."

30

1           **Section 12.** Section 75-20-231, MCA, is amended to read:

2           **"75-20-231. Expedited review.** (1) The department shall issue a certification decision within ~~180~~  
3 90 days from the date on which an application is considered complete for a facility that:

4           (a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in  
5 75-20-232; or

6           (b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely  
7 to result in significant impacts pursuant to 75-20-232.

8           (2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting  
9 study, except as provided in 75-1-201."

10

11           **Section 13.** Section 75-20-232, MCA, is amended to read:

12           **"75-20-232. Criteria for identifying proposed facilities that qualify for expedited review.** (1) In  
13 order for a facility to qualify for expedited review under 75-20-231, the department shall make a  
14 significance determination of the impacts associated with a proposed facility. This determination is the  
15 basis of the department's decision concerning whether the proposed facility qualifies for expedited review.

16           (2) The department shall consider the following criteria in determining the significance of each  
17 impact that the proposed facility has on the quality of the human environment:

18           (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

19           (b) (i) the probability that the impact will occur if the proposed action occurs; or

20           (ii) reasonable assurance in keeping with the potential severity of an impact that the impact will  
21 not occur;

22           (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or  
23 contribution of the impact to cumulative impacts;

24           (d) the quantity and quality of each environmental resource or value that would be affected,  
25 including the uniqueness and fragility of those resources or values;

26           (e) the importance to the state and to society of each environmental resource or value that would  
27 be affected;

28           (f) any precedent that would be set as a result of an impact of the proposed action that would  
29 commit the department to future actions with significant impacts or to a decision in principle about future  
30 actions;

- 1 (g) potential conflict with local, state, or federal laws, requirements, or formal plans; ~~and~~  
 2 (h) the degree to which the impacts on the human environment are likely to create a high level of  
 3 public concern; and  
 4 (i) the economic importance and benefits to the state and the local community of the proposed  
 5 facility.

6 (3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact  
 7 are significant, expedited review is required."  
 8

9 **Section 14.** Section 75-20-301, MCA, is amended to read:

10 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 45 days  
 11 after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(c) and (8)(d), the  
 12 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the  
 13 department finds and determines:

- 14 ~~(a) the basis of the need for the facility;~~  
 15 (A) THE BASIS OF THE NEED FOR THE FACILITY;  
 16 ~~(b)(a)(B) the nature of the probable environmental impact;~~  
 17 ~~(c)(b)(C) that the facility minimizes adverse environmental impact, considering the state of available~~  
 18 ~~technology and the nature and economics of the various alternatives;~~  
 19 ~~(d)(c)(D) in the case of an electric, gas, or liquid transmission line or aqueduct:~~  
 20 (i) what part, if any, of the line or aqueduct will be located underground;  
 21 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the  
 22 utility systems serving the state and interconnected utility systems; and  
 23 (iii) that the facility will serve the interests of utility system economy and reliability;  
 24 ~~(e)(d)(E) that the location of the facility as proposed conforms to applicable state and local laws~~  
 25 ~~and regulations, except that the department may refuse to apply any local law or regulation if it finds that,~~  
 26 ~~as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing~~  
 27 ~~technology, of factors of cost or economics, or of the needs of consumers, whether located inside or~~  
 28 ~~outside the directly affected government subdivisions;~~  
 29 ~~(f)(e)(F) that the facility will serve the public interest, and convenience, ~~and necessity,~~ AND~~  
 30 NECESSITY;

1 ~~(g)(f)(G)~~ that the department or board has issued any necessary air or water quality decision,  
2 opinion, order, certification, or permit as required by 75-20-216(3); and

3 ~~(h)(g)(H)~~ that the use of public lands for location of the facility was evaluated and public lands  
4 were selected whenever their use is as economically practicable as the use of private lands.

5 (2) In determining that the facility will serve the public interest, ~~and~~ and convenience, ~~and necessity~~  
6 AND NECESSITY under subsection ~~(1)(f)(1)(e)(1)(F)~~, the department shall consider:

7 (a) the items listed in ~~subsections (1)(a) and subsection~~ SUBSECTIONS (1)(A) AND (1)(b);

8 (b) the benefits to the applicant and the state resulting from the proposed facility;

9 (c) the effects of the economic activity resulting from the proposed facility;

10 (d) the effects of the proposed facility on the public health, welfare, and safety;

11 (e) any other factors that it considers relevant.

12 (3) Within ~~45~~ 30 days after issuance of the report pursuant to 75-20-216, for facilities defined  
13 in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), the department shall approve a facility as proposed  
14 or as modified or an alternative to a proposed facility if the department finds and determines:

15 (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant  
16 environmental impacts; ~~or~~ and

17 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in  
18 monetary terms, ~~do not pose any threat of serious injury or damage to~~ will not result in:

19 (i) a violation of a law or standard that protects the environment; or

20 ~~(ii) the social and economic conditions of inhabitants of the affected area; or~~

21 ~~(iii)(ii) a violation of a law or standard that protects the public health; and safety; or welfare of area~~  
22 inhabitants.

23 (4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b),  
24 the alternative must:

25 (a) meet the objective of the applicant's proposal;

26 (b) be available to the applicant; and

27 (c) be reasonable and specific to the applicant's proposed site.

28 (5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a  
29 basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).

30 (6) For facilities defined in 77-20-104(8), if the department cannot make the findings required in

1 ~~75-20-304~~ THIS SECTION, it shall deny the certificate."

2

3 **Section 15.** Section 75-20-303, MCA, is amended to read:

4 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
5 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

6 (2) If the department has found that any regional or local law or regulation that would be  
7 otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is  
8 unreasonably restrictive.

9 (3) A certificate issued by the department must include the following:

10 (a) an environmental evaluation statement related to the facility being certified. The statement  
11 must include but is not limited to analysis of the following information:

12 (i) the environmental impact of the proposed facility; and

13 (ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

14 (b) a plan for monitoring environmental effects of the proposed facility;

15 (c) a plan for monitoring the certified facility site between the time of certification and completion  
16 of construction;

17 (d) a time limit as provided in subsection (4); and

18 (e) a statement signed by the applicant showing agreement to comply with the requirements of  
19 this chapter and the conditions of the certificate.

20 (4) (a) The department shall issue as part of the certificate the following time limits:

21 (i) For a facility as defined in 75-20-104(8)(c) or(8)(d) that is more than 30 miles in length,  
22 construction must be completed within 10 years.

23 (ii) For a facility as defined in 75-20-104(8)(c) or (8)(d) that is 30 miles or less in length,  
24 construction must be completed within 5 years.

25 (iii) For a facility as defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), construction must  
26 begin within 6 years and continue with due diligence in accordance with preliminary construction plans  
27 established in the certificate.

28 (b) Unless extended or renewed, a certificate lapses and is void if the facility is not constructed  
29 or if construction of the facility is not commenced within the time limits provided in this section.

30 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the

1 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i)  
 2 and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort  
 3 includes the process of acquiring any necessary state or federal permit or certificate for the facility and  
 4 the process of judicial review of a permit or certificate.

5 (d) For any facility as defined in 75-20-104, upon issuance of a certificate, construction must be  
 6 allowed to commence within 12 months of the issuance of the certificate. Construction may begin  
 7 immediately upon issuance of a certificate unless the department finds that there is substantial and  
 8 convincing evidence that a delay in the commencement of construction is necessary and should be  
 9 established for a particular facility. The delay may not exceed 12 months in duration."

10

11 **Section 16.** Section 85-2-124, MCA, is amended to read:

12 **"85-2-124. Fees for environmental impact statements.** (1) Whenever the department determines  
 13 that the filing of an application {or a combination of applications} for a permit or approval under this  
 14 chapter requires the preparation of an environmental impact statement as prescribed by the Montana  
 15 Environmental Policy Act and the application {or combination of applications} involves the use of 4,000  
 16 or more acre-feet per year and 5.5 or more cubic feet per second of water, the applicant shall pay to the  
 17 department the fee prescribed in this section. The department shall notify the applicant in writing within  
 18 90 days of receipt of a correct and complete application {or a combination of applications} if it determines  
 19 that an environmental impact statement and fee is required.

20 (2) Upon notification by the department under subsection (1), the applicant shall pay a fee based  
 21 upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities  
 22 as herein provided in this section. The maximum fee that ~~shall~~ must be paid to the department may not  
 23 exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus  
 24 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over  
 25 \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to  
 26 \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee ~~shall~~ must be deposited in  
 27 the state special revenue fund to be used by the department only to comply with the Montana  
 28 Environmental Policy Act in connection with the ~~application(s)~~ application or applications. Any amounts  
 29 paid by the applicant but not actually expended by the department ~~shall~~ must be refunded to the applicant.

30 (3) The department and the applicant may determine by agreement the estimated cost of any

1 facility for purposes of computing the amount of the fee to be paid to the department by the applicant.

2 The department may contract with an applicant for:

3 (a) the development of information by the applicant or a third party on behalf of the department  
4 and the applicant concerning the environmental impact of any proposed activity under an application;

5 (b) the division of responsibility between the department and an applicant for supervision over,  
6 control of, and payment for the development of information by the applicant or a third party on behalf of  
7 the department and the applicant under any such contract or contracts;

8 (c) the use or nonuse of a fee or any part ~~thereof~~ of a fee paid to the department by an applicant.

9 (4) Any payments made to the department or any third party by an applicant under any ~~such~~  
10 contract or contracts ~~shall~~ must be credited against any fee that the applicant ~~must~~ is required to pay  
11 ~~hereunder~~ under this section. The department and the applicant may agree on additional credits against  
12 the fee for environmental work performed by the applicant at the applicant's own expense.

13 (5) ~~No~~ A fee as prescribed by this section may not be assessed against an applicant for a permit  
14 or approval if the applicant has also filed an application for a certificate of ~~environmental compatibility or~~  
15 ~~public need~~ compliance pursuant to the Montana Major Facility Siting Act and the appropriation or use of  
16 water involved in the ~~application(s)~~ application or applications for permit or approval has been or will be  
17 studied by the department pursuant to that act.

18 (6) This section ~~shall apply~~ applies to all applications, pending or ~~hereinafter~~ filed, for which the  
19 department has not, ~~as of April 9, 1975,~~ commenced writing an environmental impact statement. This  
20 section ~~shall~~ does not apply to any application, if the fee for ~~which~~ the application would not exceed  
21 \$2,500.

22 (7) Failure to submit the fee as required by this section ~~shall void~~ voids the ~~application(s)~~  
23 application or applications.

24 (8) The department may in its discretion rely upon the environmental studies, investigations,  
25 reports, and assessments made by any other state agency or any person, including any applicant, in the  
26 preparation of its environmental impact statement."

27

28 **Section 17.** Section 85-2-607, MCA, is amended to read:

29 **"85-2-607. Utility facilities.** This part does not apply to applications to appropriate water for use  
30 by a utility facility for which a certificate of ~~environmental compatibility and public need~~ compliance is

1 granted pursuant to the Montana Major Facility Siting Act."

2

3 **Section 18.** Section 85-15-107, MCA, is amended to read:

4 **"85-15-107. Exemptions.** (1) The provisions of 85-15-108 through 85-15-110, 85-15-209  
5 through 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

6 (a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is  
7 subject to the permit;

8 (b) federal dams and reservoirs;

9 (c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory  
10 commission; or

11 (d) dams that are required to obtain a certificate of ~~environmental compatibility and public need~~  
12 compliance pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

13 (2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401,  
14 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they  
15 are subject to a dam safety review by a federal agency.

16 (3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site  
17 as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of  
18 1980 (CERCLA), Public Law 96-510."

19

20 **Section 19.** Section 90-6-207, MCA, is amended to read:

21 **"90-6-207. Priorities for impact grants.** (1) The department of commerce shall biennially designate:

22 (a) each county, incorporated city and town, school district, and other governmental unit that has  
23 had or expects to have as a result of the impact of coal development a net increase or decrease in  
24 estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

25 (b) each county and all local governmental units within each county in which:

26 (i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act  
27 has been granted by the department of environmental quality for a project within the county that will  
28 establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce  
29 determines will commence production within 2 years;

30 (ii) the department of commerce has determined that the production of an existing mine will

1 increase or decrease by at least 1 million tons a year and that the new, expanded, or reduced production  
2 will commence within 2 years of the designation;

3 (iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

4 (iv) a certificate of ~~environmental compatibility and public need~~ compliance in accordance with the  
5 Montana Major Facility Siting Act has been granted by the board of environmental review for a new  
6 steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of  
7 Montana-mined coal and for which the department of commerce determines the construction or operation  
8 will commence within 2 years of the designation;

9 (c) each local governmental unit located within 100 miles, measured over the shortest all-weather  
10 public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

11 (d) each local governmental unit in which:

12 (i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining  
13 or is scheduled to cease within 1 year; or

14 (ii) a steam-generating or other coal-burning facility that has operated under a certificate of  
15 ~~environmental compatibility and public need~~ compliance in accordance with the Montana Major Facility  
16 Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is  
17 scheduled to close within 1 year.

18 (2) Designation under subsection (1) of:

19 (a) any local governmental unit extends to and includes as a designated unit the county in which  
20 it is located; and

21 (b) a county extends to and includes as a designated unit any local governmental unit in the  
22 county that contains at least 10% of the total population of the county.

23 (3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds  
24 appropriated to it each year for grants to governmental units and state agencies for meeting the needs  
25 caused by an increase or decrease in coal development or in the consumption of coal by a coal-using  
26 energy complex to local governmental units other than those governmental units designated under  
27 subsection (1).

28 (4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods  
29 as follows:

30 (a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

- 1 (b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;
- 2 (c) one consecutive 3-year period ending with the current calendar year;
- 3 (d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and
- 4 (e) one consecutive 3-year period ending 2 calendar years after the current calendar year.
- 5 (5) Attention should be given by the board to the need for community planning before the full
- 6 impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan
- 7 for the orderly management of the existing or contemplated growth or decline problems.
- 8 (6) All funds appropriated under this part are for use related to local impact.
- 9 (7) All designations based on an increase in coal development or in the consumption of coal by
- 10 a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A
- 11 designation may not continue after the department of commerce determines that the mine, railroad, or
- 12 facility that provided the basis for a designation is contributing sufficient tax revenue to the designated
- 13 governmental unit to meet the increased costs of providing the services necessitated by the development
- 14 of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible
- 15 for coal impact grants of not more than 50% of the funds appropriated to the board for grants in
- 16 circumstances in which an impact exists in a community or area directly affected by:
- 17 (a) the operation of a coal mine or a coal-using energy complex; or
- 18 (b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy
- 19 complex."

20

21 NEW SECTION. **Section 20. Saving clause.** [This act] does not affect rights and duties that

22 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

23 act].

24

25 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

26

- END -