

HOUSE BILL NO. 466

INTRODUCED BY R. OSMUNDSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSON WHO PLANS TO APPLY FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT TO PREPARE A PUBLIC PARTICIPATION PLAN; REQUIRING NOTICE OF A PUBLIC PARTICIPATION PLAN'S AVAILABILITY; REQUIRING THE PUBLIC PARTICIPATION PLAN TO BE IMPLEMENTED; AMENDING SECTIONS 75-20-104 AND 75-20-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Public participation plan and website required. (1) At the earliest

practicable date, a person who is considering developing a facility that may require the filing of an application with the department for a certificate under this chapter shall:

- (a) develop a public participation plan in accordance with [section 2];
- (b) establish and maintain a website with information about the facility for which the certificate may be sought and the contact information required pursuant to [section 2(1)(d)]; and
- (c) provide notice of the public participation plan's availability in accordance with subsection (2).

(2) Notice of a participation plan's availability must be published at least once a week for 2 consecutive weeks in a daily newspaper of general circulation in the area potentially affected by the facility.

(3) The person preparing the plan may update and revise a public participation plan and website as necessary.

NEW SECTION. Section 2. Public participation plan -- contents. (1) A public participation plan must

contain a description of:

- (a) the specific methods and actions an applicant will take to facilitate communication with the public, state and federal agencies, local government officials, and other potentially interested parties in the development of an application for a certificate and in the consideration, design, and siting of a facility for which a certificate is sought;
- (b) how an applicant will respond to requests for information and comments from the public, state and



1 federal agencies, local government officials, and other potentially interested parties;
2 (c) specific methods and actions an applicant will take to meet with landowners potentially affected by
3 a proposed facility; and

4 (d) the name, address, telephone number, and e-mail address of the person who can be contacted for
5 additional information about a facility for which an application is developed and a certificate is sought.

6 (2) A public participation plan must include the website address for the website required pursuant to
7 [section 1].

8 (3) In developing a public participation plan, a person may:

9 (a) establish advisory stakeholder groups;

10 (b) determine how to involve stakeholders in studies conducted pursuant to subsection (3)(c); and

11 (c) conduct studies that include but are not limited to:

12 (i) an assessment of the financial or technical feasibility of a facility;

13 (ii) a determination of the design or location of a facility's features;

14 (iii) an examination of alternatives to a facility;

15 (iv) an evaluation of the impact of a facility on natural and cultural resources; and

16 (v) an evaluation of suitable mitigation measures.

17

18 **NEW SECTION. Section 3. Implementation of public participation plan -- documentation.** (1) A
19 person who applies for a certificate in accordance with 75-20-211 shall document that a public participation plan
20 prepared pursuant to [section 2] was implemented.

21 (2) Documentation may include:

22 (a) meeting records;

23 (b) correspondence with the public, state and federal agencies, local government officials, and other
24 potentially interested parties; and

25 (c) any other information the applicant feels demonstrates compliance with the provisions of subsection
26 (1).

27

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

29 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
30 apply:

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

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

5 (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
6 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the
7 delivery of the energy form or product produced by a facility.

8 (b) The term does not include a transmission substation, a switchyard, voltage support, or other control
9 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

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

11 (5) "Certificate" means the certificate of compliance issued by the department under this chapter that
12 is required for the construction or operation of a facility.

13 (6) "Commence to construct" means:

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

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

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

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

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

27 (8) "Facility" means:

28 (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,
29 except that the term:

30 (i) does not include an electric transmission line and associated facilities of a design capacity of 230

1 kilovolts or less and 10 miles or less in length;

2 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less
3 than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or
4 options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property
5 along the centerline;

6 (iii) does not include an electric transmission line that is less than 150 miles in length and extends from
7 an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation
8 facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid
9 at an existing transmission substation or other facility for which the person planning to construct the line has
10 obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively
11 own more than 75% of the property along the centerline;

12 (iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less
13 than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a
14 newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly
15 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection
16 (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission
17 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited
18 areas.

19 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

20 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter
21 and 50 miles in length, and associated facilities, except that the term does not include:

22 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural
23 crops or for drinking water; or

24 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person
25 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
26 than 75% of the owners who collectively own more than 75% of the property along the centerline;

27 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter
28 and 30 miles in length, and associated facilities used to transport coal suspended in water;

29 (c) any use of geothermal resources, including the use of underground space in existence or to be
30 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived

1 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by
 2 the department and added to an existing plant; or

3 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts
 4 of hydroelectric power or more or any addition thereto.

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

8 (10) "Public participation plan" means a document prepared in accordance with [section 2] by a person
 9 who is considering filing an application for a certificate in accordance with this chapter that sets forth the person's
 10 plan for ensuring meaningful and timely public involvement in the development of an application for a certificate
 11 and in the consideration, design, and siting of the facility for which the certificate will be sought.

12 ~~(10)~~(11) "Sensitive areas" means government-designated areas that have been recognized for their
 13 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
 14 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
 15 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
 16 parks, monuments, or historic sites.

17 ~~(11)~~(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly
 18 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
 19 operation of a proposed transmission line.

20 ~~(12)~~(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
 21 including but not limited to:

- 22 (a) installing larger conductors;
- 23 (b) replacing insulators;
- 24 (c) replacing pole or tower structures; or
- 25 (d) changing structure spacing, design, or guying.

26 ~~(13)~~(14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
 27 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

28

29 **Section 5.** Section 75-20-211, MCA, is amended to read:

30 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall

1 file with the department an application for a certificate under this chapter and for the permits required under the
 2 laws administered by the department in the form that is required under applicable rules, containing the following
 3 information:

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

5 (ii) a summary of any preexisting studies that have been made of the impact of the facility;

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

10 (iv) (A) for facilities as defined in 75-20-104(8)(a) and (8)(b), baseline data for the primary and reasonable
 11 alternate locations; or

12 (B) for facilities as defined in 75-20-104(8)(c), baseline data for the proposed location and, at the
 13 applicant's option, any alternative locations acceptable to the applicant for siting the facility;

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

15 (vi) a public participation plan that meets the requirements of [section 2];

16 (vii) documentation that a public participation plan was implemented in accordance with [section 3]; and

17 ~~(viii)~~ (viii) other information that the applicant considers relevant or that the department by order or rule may
 18 require.

19 (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the
 20 copy or copies must be available for public inspection.

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

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

25 (4) An application must also be accompanied by proof that public notice of the application was given to
 26 persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed
 27 to be located, by publication of a summary of the application in those newspapers that will substantially inform
 28 those persons of the application."
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30 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified

1 as an integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to [sections 1 through
2 3].

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4 NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,
5 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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7 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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9 NEW SECTION. Section 9. Applicability. [This act] applies to applications received after [the effective
10 date of this act].

11 - END -