

HOUSE BILL NO. 504

INTRODUCED BY M. YATES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PERSONS ISSUED A CERTIFICATE OF
5 COMPLIANCE UNDER THE MAJOR FACILITY SITING ACT TO CONSTRUCT OR UPGRADE CERTAIN
6 TRANSMISSION LINES USED TO EXPORT ELECTRICITY TO COMPENSATE CERTAIN PERSONS;
7 REQUIRING THE PERSON ISSUED A CERTIFICATE OF COMPLIANCE TO PROVIDE NOTICE OF
8 AVAILABILITY OF COMPENSATION; ALLOWING FOR JUDICIAL REMEDY; AMENDING SECTIONS
9 75-20-104, 75-20-401, 75-20-407, AND 75-20-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
10 AND AN APPLICABILITY DATE."

11
12 WHEREAS, the people of Montana are under no obligation to suffer because of legislative acts in other
13 states; and

14 WHEREAS, the concept that the person causing the cost should be the person to pay the cost is a
15 long-held doctrine of fairness; and

16 WHEREAS, the Montana Legislature has a constitutional obligation to protect the private property rights
17 of all Montanans; and

18 WHEREAS, the economic well-being of the state can only be protected and advanced through rigorous
19 protection of the rights of all Montanans.

20

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

22

23 NEW SECTION. **Section 1. Compensation required for transmission lines after issuance of**
24 **certificate.** (1) A person who obtains a certificate of compliance from the department in accordance with this
25 chapter to construct or upgrade an electric transmission line or associated facilities that are intended to be used
26 to export electricity for renewable mandates provided in subsection (3) shall compensate property owners,
27 pursuant to [section 2(1)], who:

28 (a) may suffer a negative personal property or business property outcome because of the line or
29 upgrade; and

30 (b) are not owners of real property over which the proposed line or upgrade passes.



1 (2) Except as provided in subsection (4), a certificate holder referred to in subsection (1) shall
2 compensate Montana owners of real property, pursuant to [section 2(2)], who own land in Montana over which
3 the proposed line or upgrade passes.

4 (3) A transmission line or upgrade is determined to be exporting electricity for renewable mandates if
5 the contracted power on the line or upgrade is used to satisfy renewable energy requirements or mandates in
6 locations other than Montana.

7 (4) If a certificate holder referred to in subsection (1) exercises the power of eminent domain with regard
8 to real property over which the proposed line or upgrade passes, the owner of the real property may not claim
9 compensation under subsection (2) in addition to compensation required by a condemnation order issued
10 pursuant to Title 70, chapter 30.

11
12 **NEW SECTION. Section 2. Determination of compensation for transmission line.** (1) (a) Within 30
13 days of the final publication of the notice required in [section 3], a person seeking compensation shall notify the
14 certificate holder that the person is seeking compensation pursuant to [section 1(1)].

15 (b) The certificate holder and the person seeking compensation pursuant to [section 1(1)] shall negotiate
16 the terms of compensation. The burden of proving a negative personal property or business property outcome
17 is on the person seeking compensation.

18 (2) (a) Within 30 days of the final publication of the notice required in [section 3], the owner of real
19 property shall notify the certificate holder that the owner is seeking compensation pursuant to [section 1(2)].

20 (b) An owner of real property seeking compensation pursuant to [section 1(2)] must be compensated
21 by the certificate holder for the reduction in value of the appraised market value of the property over which the
22 line or upgraded line passes.

23 (c) The compensation required pursuant to subsection (2)(b) is in addition to right-of-way agreements
24 or options for a right-of-way required pursuant to this chapter and in no way impairs agreements or options
25 reached between a certificate holder and a real property owner.

26 (d) The burden of proving a reduction in the value of the appraised market value is on the owner of real
27 property.

28 (3) A person who fails to notify the certificate holder that the person is seeking compensation pursuant
29 to [section 1] within the 30-day deadline required pursuant to subsections (1)(a) and (2)(a) of this section may
30 not at a later date seek compensation.

1 (4) (a) Unless a person seeks judicial review pursuant to subsection (6), the certificate holder shall
2 provide the compensation to each person seeking compensation within 1 year of being contacted pursuant to
3 subsection (1)(a) or (2)(a).

4 (b) Unless alternative terms of compensation are agreed to, the certificate holder shall provide the
5 compensation in a lump sum.

6 (5) A person may not seek compensation under both [section 1(1) and (2)].

7 (6) A person aggrieved by the final terms of compensation pursuant to subsection (1)(b) or (2)(b) may
8 obtain judicial review of the compensation agreement in accordance with [section 4]. If terms of compensation
9 are not reached, a person may also seek judicial review.

10
11 **NEW SECTION. Section 3. Notice requirement for compensation.** (1) Within 30-days of receiving
12 a certificate to construct or upgrade an electric transmission line or associated facilities that are intended to be
13 used to export electricity for renewable mandates as identified in [section 1(3)], the certificate holder shall provide
14 public notice to persons residing in the area in which any portion of the line or upgrade is located. This notice
15 must be made by publication of a summary describing the transmission line or upgrade and the proposed location
16 of the line or upgraded line in those newspapers that will substantially inform those persons of the construction
17 or upgrade. The notice must:

18 (a) inform people of their rights to seek compensation pursuant to [section 1];

19 (b) include sufficient information for people to contact the certificate holder and notify the certificate
20 holder that the person is seeking compensation; and

21 (c) be published once a week for 2 consecutive weeks.

22 (2) Within 36 months of the date of the public notice provided under subsection (1), copies of the
23 compensation agreements reached pursuant to [sections 1 and 2] must be filed with the department.

24
25 **NEW SECTION. Section 4. Judicial review of terms of compensation.** (1) A person may obtain
26 judicial review of the terms of compensation by filing a petition in district court. A challenge to the terms of
27 compensation must be brought in the county in which the construction of the line or upgrade will occur. If an
28 activity will occur in more than one county, the action may be brought in any of the counties in which the activity
29 will occur.

30 (2) The judicial review procedure is the procedure for contested cases under the Montana Administrative

1 Procedure Act.

2 (3) All judicial challenges of the terms of compensation for projects with a project cost, as determined
3 by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in
4 that court. If the court determines that the challenge was without merit or was for an improper purpose, such as
5 to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award
6 attorney fees and costs incurred in defending the action.

7

8 **Section 5.** Section 75-20-104, MCA, is amended to read:

9 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
10 apply:

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

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

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

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

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

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

23 (6) "Commence to construct" means:

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

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

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

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

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

7 (8) "Facility" means:

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

10 (i) does not include an electric transmission line and associated facilities of a design capacity of 230
11 kilovolts or less and 10 miles or less in length;

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

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

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

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

30 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter

1 and 50 miles in length, and associated facilities, except that the term does not include:

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

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

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

9 (c) any use of geothermal resources, including the use of underground space in existence or to be
10 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
11 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by
12 the department and added to an existing plant; or

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

15 (9) "Market value" means the value at which property would change hands between a willing buyer and
16 a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of
17 relevant facts.

18 (10) "Negative personal property or business property outcome" means a reduction in the value of the
19 appraised market value of property caused by a transmission line or upgrade over which a transmission line or
20 upgrade does not pass.

21 ~~(9)~~(11) "Person" means any individual, group, firm, partnership, corporation, limited liability company,
22 cooperative, association, government subdivision, government agency, local government, or other organization
23 or entity.

24 ~~(10)~~(12) "Sensitive areas" means government-designated areas that have been recognized for their
25 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
26 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
27 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
28 parks, monuments, or historic sites.

29 ~~(11)~~(13) "Transmission substation" means any structure, device, or equipment assemblage, commonly
30 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or

1 operation of a proposed transmission line.

2 ~~(+2)~~(14) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
3 including but not limited to:

4 (a) installing larger conductors;

5 (b) replacing insulators;

6 (c) replacing pole or tower structures; or

7 (d) changing structure spacing, design, or guying.

8 ~~(+3)~~(15) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
9 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

10

11 **Section 6.** Section 75-20-401, MCA, is amended to read:

12 **"75-20-401. Additional requirements by other governmental agencies not permitted after issuance**
13 **of certificate -- exceptions -- venue for challenging certificate issuance.** (1) ~~Notwithstanding~~ Except as
14 provided in [sections 1 through 4] and notwithstanding any other law, a state or regional agency or municipality
15 or other local government may not require any approval, consent, permit, certificate, or other condition for the
16 construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter,
17 except that the department and board retain the authority that they have or may be granted to determine
18 compliance of the proposed facility with state and federal standards and implementation plans for air and water
19 quality and to enforce those standards.

20 (2) This chapter does not prevent the application of state laws for the protection of employees engaged
21 in the construction, operation, or maintenance of a facility.

22 (3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate
23 holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless
24 otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with
25 a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause
26 of a different nature pending in that court. If the court determines that the challenge was without merit or was for
27 an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost
28 in litigation, the court may award attorney fees and costs incurred in defending the action.

29 (4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the
30 county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county,

1 the action may be brought in any of the counties in which the activity will occur."

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3 **Section 7.** Section 75-20-407, MCA, is amended to read:

4 **"75-20-407. Jurisdiction of courts restricted.** Except as expressly set forth in 75-20-401, 75-20-406,
5 ~~and 75-20-408, and [section 4], no a~~ court of this state ~~has~~ does not have jurisdiction to hear or determine any
6 issue, case, or controversy concerning any matter ~~which that~~ was or could have been determined in a proceeding
7 before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility;
8 except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ in accordance
9 with this chapter pursuant to 75-20-404 and 75-20-405 or 75-20-408."

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11 **Section 8.** Section 75-20-409, MCA, is amended to read:

12 **"75-20-409. Optional annual installments for location of facility on landowner's property.** ~~A~~ Except
13 as provided in [sections 1 through 4], a landowner upon whose land a facility is proposed to be located has the
14 option of receiving any negotiated settlement for use of the landowner's land, if and when the land is used for a
15 facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five
16 consecutive annual installments."

17

18 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified
19 as an integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to [sections 1 through
20 4].

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22 NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

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24 NEW SECTION. Section 11. Applicability. [This act] applies to certificates of compliance under the
25 Major Facility Siting Act issued after [the effective date of this act].

26

- END -