

## SENATE BILL NO. 206

INTRODUCED BY L. JONES, K. PETERSON, BROWN, MEHLHOFF, COOK, MILBURN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ~~DESIGNATE~~ EXAMINE A 1-MILE-WIDE FACILITY SITING CORRIDOR ALONG THE FACILITY ROUTE WHEN ~~ISSUING A CERTIFICATE FOR CERTAIN FACILITIES;~~ CONDUCTING A REVIEW IN ACCORDANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT IN CONJUNCTION WITH AN APPLICATION FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT; EXEMPTING SITING MODIFICATIONS WITHIN THE FACILITY SITING CORRIDOR FROM TITLE 75, CHAPTER 1, PART 2; REQUIRING FACILITIES TO BE SITED IN FEDERALLY DESIGNATED ENERGY CORRIDORS WHEN COMPATIBLE WITH OTHER SITING AND RELIABILITY REQUIREMENTS; AMENDING ~~SECTION~~ SECTIONS 75-20-104, 75-20-301, AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**SECTION 1. SECTION 75-20-104, MCA, IS AMENDED TO READ:**

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

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

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

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

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

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

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that

1 is required for the construction or operation of a facility.

2 (6) "Commence to construct" means:

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

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

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

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

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

16 (8) "Facility" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 parks, monuments, or historic sites.

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

5 (12) "Transmission reliability agencies" means the federal energy regulatory commission, the western  
6 electricity coordinating council, the national electric reliability council, and the Midwest reliability organization.

7 ~~(12)~~(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions  
8 including but not limited to:

9 (a) installing larger conductors;

10 (b) replacing insulators;

11 (c) replacing pole or tower structures; or

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

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

15

16 **SECTION 2. SECTION 75-20-301, MCA, IS AMENDED TO READ:**

17 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after  
18 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department  
19 shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds  
20 and determines:

21 (a) the basis of the need for the facility;

22 (b) the nature of the probable environmental impact;

23 (c) that the facility minimizes adverse environmental impact, considering the state of available technology  
24 and the nature and economics of the various alternatives;

25 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

26 (i) what part, if any, of the line or aqueduct will be located underground;

27 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility  
28 systems serving the state and interconnected utility systems; and

29 (iii) that the facility will serve the interests of utility system economy and reliability;

30 (e) that the location of the facility as proposed conforms to applicable state and local laws and

1 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied  
 2 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of  
 3 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected  
 4 government subdivisions;

5 (f) that the facility will serve the public interest, convenience, and necessity;

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

8 (h) that the use of public lands or federally designated energy corridors for location of ~~the~~ a facility  
 9 defined in 75-20-104(8)(a) or (8)(b) was evaluated and public lands or federally designated energy corridors for  
 10 that facility were selected whenever their use ~~is as economically practicable as the use of private lands~~ was  
 11 compatible with:

12 (i) the requirements of subsections (1)(a) through (1)(g); and

13 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined  
 14 in 75-20-104(8)(a).

15 (2) In determining that the facility will serve the public interest, convenience, and necessity under  
 16 subsection (1)(f), the department shall consider:

17 (a) the items listed in subsections (1)(a) and (1)(b);

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

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

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

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

22 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in  
 23 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a  
 24 proposed facility if the department finds and determines:

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

27 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary  
 28 terms, will not result in:

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

30 (ii) a violation of a law or standard that protects the public health and safety.

1 (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section,  
2 it shall deny the certificate."

3

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

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

7 (2) If the department has found that any regional or local law or regulation that would be otherwise  
8 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is 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 must  
11 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 of  
16 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 this  
19 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)(a) that is more than 30 miles in length and for a facility defined  
22 in 75-20-104(8)(b), construction must be completed within 10 years.

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

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

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

29 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the  
30 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and

1 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or  
 2 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

3 (d) Construction may begin immediately upon issuance of a certificate unless the department finds that  
 4 there is substantial and convincing evidence that a delay in the commencement of construction is necessary and  
 5 should be established for a particular facility.

6 ~~(5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the certificate issued ENVIRONMENTAL REVIEW~~  
 7 ~~CONDUCTED PURSUANT TO TITLE 75, CHAPTER 1, PARTS 1 THROUGH 3, PREPARED by the department must designate~~  
 8 ~~a 1-mile-wide facility siting corridor along the facility route.~~

9 ~~(B) THE DEPARTMENT SHALL SITE A CORRIDOR OF AT LEAST 500 FEET IN WIDTH FOR THE FACILITY WITHIN THE~~  
 10 ~~1-MILE-WIDE CORRIDOR IN ACCORDANCE WITH 75-20-301.~~

11 ~~(b)(C) A IF THE CERTIFICATE HOLDER COMPLIES WITH SUBSECTION (6), A certificate holder may site MODIFY~~  
 12 ~~THE SITING OF the facility within the 1-mile-wide facility siting corridor pursuant to subsection (5)(a) without~~  
 13 ~~complying with the provisions of 75-20-219 and IF THE ALTERNATE SITING IS DONE in a manner that minimizes the~~  
 14 ~~impact on residential areas, crop land, and sensitive sites.~~

15 ~~(c) Facility siting modifications within the 1-mile-wide facility siting corridor along the facility route are~~  
 16 ~~exempt from the provisions of Title 75, chapter 1, part 2:~~

17 ~~(6) (A) A CERTIFICATE HOLDER MAY SUBMIT AN ADJUSTMENT OF THE LOCATION OF A FACILITY OUTSIDE THE~~  
 18 ~~CORRIDOR DESIGNATED PURSUANT TO SUBSECTION (5) TO THE DEPARTMENT. THE ADJUSTMENT MUST BE ACCOMPANIED~~  
 19 ~~BY THE WRITTEN AGREEMENT OF THE AFFECTED PROPERTY OWNER AND ALL CONTIGUOUS PROPERTY OWNERS THAT~~  
 20 ~~WOULD BE AFFECTED. THE SUBMISSION MUST INCLUDE A MAP SHOWING THE APPROVED FACILITY LOCATION AND THE~~  
 21 ~~PROPOSED ADJUSTMENT.~~

22 ~~(B) THE CERTIFICATE HOLDER MAY CONSTRUCT THE FACILITY AS DESCRIBED IN THE SUBMISSION UNLESS THE~~  
 23 ~~DEPARTMENT NOTIFIES THE CERTIFICATE HOLDER WITHIN 15 DAYS OF THE SUBMISSION THAT THE DEPARTMENT HAS~~  
 24 ~~DETERMINED THAT:~~

25 ~~(I) THE ADJUSTMENT WOULD CHANGE THE BASIS OF ANY FINDING REQUIRED UNDER 75-20-301 TO THE EXTENT~~  
 26 ~~THAT THE DEPARTMENT WOULD HAVE SELECTED A DIFFERENT LOCATION FOR THE FACILITY; OR~~

27 ~~(II) THE ADJUSTMENT WOULD MATERIALLY INCREASE UNMITIGATED ADVERSE IMPACTS.~~

28 ~~(C) SITING OF A FACILITY WITHIN THE CORRIDOR DESIGNATED PURSUANT TO SUBSECTION (5) OR AN ADJUSTMENT~~  
 29 ~~PURSUANT TO SUBSECTION (6)(A) IS NOT SUBJECT TO:~~

30 ~~(I) TITLE 75, CHAPTER 1, PART 2;~~

1           (II) A CERTIFICATE AMENDMENT UNDER 75-20-219; OR

2           (III) A BOARD REVIEW UNDER 75-20-223."

3

4           NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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6           NEW SECTION. Section 5. Applicability. [This act] applies to applications for a certificate under the

7 Major Facility Siting Act filed on or after [the effective date of this act].

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