

1 HOUSE BILL NO. 256

2 INTRODUCED BY B. HOVEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY
5 TO PROVIDE WRITTEN NOTICE DISCLOSING THE AVAILABILITY OF AN ENVIRONMENTAL ASSESSMENT
6 TO OWNERS OF PROPERTY WITHIN A 1-MILE-WIDE FACILITY SITING CORRIDOR FOR CERTAIN
7 FACILITIES UNDER THE MAJOR FACILITY SITING ACT; REQUIRING THAT A CERTIFICATE ISSUED
8 UNDER THE MAJOR FACILITY SITING ACT MUST INCLUDE CONFIRMATION THAT NOTICE OF THE
9 ENVIRONMENTAL REVIEW WAS PROVIDED; AMENDING SECTION 75-20-303, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

11

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

13

14 **Section 1.** Section 75-20-303, MCA, is amended to read:15 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
16 for a certificate, the department shall issue an opinion stating its reasons for the action taken.17 (2) If the department has found that any regional or local law or regulation that would be otherwise
18 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

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

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

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

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

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

25 (c) a plan for monitoring the certified facility site between the time of certification and completion of
26 construction;27 (d) a time limit as provided in subsection (4); ~~and~~28 (e) a statement confirming that notice was provided pursuant to subsection (5); and29 ~~(e)~~(f) a statement signed by the applicant showing agreement to comply with the requirements of this
30 chapter and the conditions of the certificate.

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

2 (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
3 in 75-20-104(8)(b), construction must be completed within 10 years.

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

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

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

10 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
11 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
12 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or
13 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

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

17 (5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant
18 to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting
19 corridor along the facility route.

20 (b) The department shall provide written notice of the availability of the DRAFT environmental review to
21 each owner of property within the 1-mile-wide facility siting corridor identified in the environmental review as
22 required by subsection (5)(a) THE DEPARTMENT'S PREFERRED ALTERNATIVE FACILITY SITING CORRIDOR. The NO MORE
23 THAN 60 DAYS PRIOR TO THE AVAILABILITY OF THE DRAFT ENVIRONMENTAL REVIEW, THE names and addresses of the
24 property owners EACH THE PROPERTY OWNER OWNERS must be obtained from the property tax rolls of the county
25 where the property is located. The EXCEPT AS PROVIDED IN SUBSECTION (5)(C), THE notice must:

26 (i) be delivered personally or by certified FIRST-CLASS mail. If delivered personally, the property owner
27 shall sign a receipt verifying that the property owner received the statement.

28 (ii) inform the property owner that the property owner's property is located within the DEPARTMENT'S
29 PREFERRED ALTERNATIVE 1-mile-wide facility siting corridor;

30 (iii) inform the property owner about how a copy of the environmental review may be obtained; and

1 (iv) inform the property owner of the property owner's rights under this chapter concerning the location
 2 of the facility and that more information concerning those rights may be obtained from the department.

3 (C) IF THERE IS MORE THAN ONE NAME LISTED ON THE PROPERTY TAX ROLLS FOR A SINGLE PROPERTY, THE
 4 NOTICE MUST BE MAILED TO THE FIRST LISTED PROPERTY OWNER AT THE ADDRESS ON THE PROPERTY TAX ROLLS.

5 (D) BY MAILING THE NOTICE AS PROVIDED IN SUBSECTION (5)(C), THE NOTICE REQUIREMENTS IN SUBSECTION
 6 (5)(B) ARE SATISFIED.

7 ~~(b)(c)(E)~~ The department shall site a corridor of at least 500 feet in width for the facility within the
 8 1-mile-wide corridor in accordance with 75-20-301. IF THE DEPARTMENT DETERMINES THAT IT WILL SELECT A FACILITY
 9 SITING CORRIDOR THAT IS COMPLETELY OR PARTIALLY DIFFERENT FROM THE PREFERRED ALTERNATIVE FACILITY SITING
 10 CORRIDOR DESCRIBED IN THE DRAFT ENVIRONMENTAL REVIEW, IT SHALL, BEFORE ISSUING THE CERTIFICATE, PROVIDE
 11 NOTICE OF ITS INTENDED FACILITY SITING CORRIDOR AND AN OPPORTUNITY TO COMMENT TO PROPERTY OWNERS WITHIN
 12 THE 1-MILE-WIDE FACILITY SITING CORRIDOR THAT DEVIATES FROM THE PREFERRED ALTERNATIVE. PROPERTY OWNERS
 13 MUST BE DETERMINED AND NOTICE MUST BE GIVEN IN THE SAME MANNER AS PROVIDED IN SUBSECTION (5)(B).

14 ~~(e)(d)(F)~~ If the certificate holder complies with subsection (6), a certificate holder may modify the siting
 15 of the facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate
 16 siting is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

17 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor
 18 designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written
 19 agreement of the affected property owner and all contiguous property owners that would be affected. The
 20 submission must include a map showing the approved facility location and the proposed adjustment.

21 (b) The certificate holder may construct the facility as described in the submission unless the department
 22 notifies the certificate holder within 15 days of the submission that the department has determined that:

23 (i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the
 24 department would have selected a different location for the facility; or

25 (ii) the adjustment would materially increase unmitigated adverse impacts.

26 (c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant
 27 to subsection (6)(a) is not subject to:

28 (i) Title 75, chapter 1, part 2;

29 (ii) a certificate amendment under 75-20-219; or

30 (iii) a board review under 75-20-223."

