

SENATE BILL NO. 97

INTRODUCED BY F. SMITH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO COMMON CARRIER
5 PIPELINES; ESTABLISHING SITING REQUIREMENTS; REQUIRING THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY TO ESTABLISH CERTAIN LEAK PREVENTION AND DETECTION
7 REQUIREMENTS; REVISING REQUIREMENTS FOR ISSUING A CERTIFICATE; REVISING TIME LIMITS FOR
8 VOIDING CERTAIN CERTIFICATES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS
9 22-3-433, 75-20-216, 75-20-301, 75-20-303, 75-20-304, AND 75-20-402, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

13
14 **NEW SECTION. Section 1. Common carrier pipelines -- siting and water protection requirements.**

15 (1) A facility, as defined in 75-20-104(8)(b), that is also a common carrier pipeline, as defined in 69-13-101, must:

16 (a) be located within easements or rights-of-way that avoid sensitive areas. An applicant shall provide
17 the department with written documentation that the location of the facility complies with the requirements of this
18 subsection (1)(a).

19 (b) include shut-off valves in locations, determined by the department, that mitigate risks to ground water
20 aquifers, source water protection areas, drinking water, irrigation systems, and fish habitat. The department also
21 may require additional valves to mitigate potential risk to sensitive water resources.

22 (c) include leak detection methods and systems and a monitoring plan, determined by the department,
23 that overlap and meet current applicable industry standards and regulatory requirements for leak detection
24 thresholds to reduce potential adverse environmental impacts.

25 (2) As used in this section, the term "sensitive areas" has the same meaning provided in 75-20-104, and
26 includes heritage properties, as defined in 22-3-421, and tribally recognized cultural sites.

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28 **Section 2.** Section 22-3-433, MCA, is amended to read:

29 **"22-3-433. Environmental review process.** (1) (a) Each Except as provided in subsection (1)(b), each
30 state agency responsible for the preparation of an environmental impact statement in accordance with the

1 Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain
 2 the comments of the historic preservation officer concerning the identification and location of heritage properties
 3 and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action.
 4 However, where the grant of an interest in state land requires the preparation of an environmental impact
 5 statement under the Montana Environmental Policy Act, the environmental impact statement ~~shall~~ must be limited
 6 to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the
 7 affected state land.

8 (b) When conducting an environmental impact statement on a facility, as defined in 75-20-104(8)(b), that
 9 is also a common carrier pipeline, as defined in 69-13-101, the state agency responsible for the preparation of
 10 the environmental impact statement shall also evaluate impacts to heritage properties located in, on, under, and
 11 within affected private land.

12 (2) When heritage properties and paleontological remains are located and identified as described in
 13 subsection (1), the responsible state agency, in consultation with the historic preservation officer and the
 14 preservation review board, shall include as part of its environmental impact statement a plan for the avoidance
 15 or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable.
 16 Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or
 17 other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with
 18 the historic preservation officer and the preservation review board."

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20 **Section 3.** Section 75-20-216, MCA, is amended to read:

21 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

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

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

24 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
 25 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing
 26 that the application is in compliance and is accepted as complete.

27 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this
 28 section, the department shall:

29 (a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria
 30 listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection

1 (3);

2 (b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted
3 by the applicant or compiled by a state or federal agency; and

4 (c) if a modification of a proposed facility is needed as determined by the department, consult with the
5 applicant. The proposed modification must be analyzed in the environmental review document prepared under
6 Title 75, chapter 1, parts 1 through 3.

7 (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within
8 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit
9 required under the laws, other than those contained in this chapter, administered by the department. A decision,
10 opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless,
11 the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision,
12 opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a
13 preliminary decision by the department and pursuant to rules adopted by the board, the department shall provide
14 an opportunity for public review and comment.

15 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following
16 acceptance of an application for a facility, the department shall issue a report that must contain the department's
17 studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and
18 other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis
19 prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if
20 compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and
21 operation of a proposed facility. If the application is for a combination of two or more facilities, the department
22 shall issue its report within the greater of the lengths of time provided for in this subsection for either of the
23 facilities.

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

27 (6) The departments of transportation,¹ fish, wildlife, and parks,² natural resources and conservation,³
28 revenue,⁴ and public service regulation,⁵ ~~and~~ the consumer counsel, and the historic preservation office shall
29 report to the department information relating to the impact of the proposed facility on each department's area of
30 expertise. The department shall allocate funds obtained from filing fees to the departments making reports and

1 to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the
2 required report."

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4 **Section 4.** Section 75-20-301, MCA, is amended to read:

5 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after
6 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department
7 shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds
8 and determines:

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

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

11 (c) that the facility minimizes adverse environmental impact, considering the state of available technology
12 and the nature and economics of the various alternatives, and, if applicable, meets the requirements of [section
13 1];

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

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

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

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

19 (e) except as provided in subsection (5), that the location of the facility as proposed conforms to
20 applicable state and local laws and regulations and in the case of a facility, as defined in 75-20-104(8)(b), that
21 is also a common carrier pipeline, as defined in 69-13-101, the facility conforms with the requirements of [section
22 1], except that the department may refuse to apply any local law or regulation if it finds that, as applied to the
23 proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of
24 cost or economics, or of the needs of consumers, whether located inside or outside the directly affected
25 government subdivisions;

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

27 (g) that the department or board has issued any necessary air or water quality decision, opinion, order,
28 certification, or permit as required by 75-20-216(3) and [section 1]; and

29 (h) that the use of public lands or federally designated energy corridors for location of a facility defined
30 in 75-20-104(8)(a) or (8)(b), except as required in [section 1], was evaluated and public lands or federally

1 designated energy corridors for that facility were selected whenever their use was compatible with:

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

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

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

7 (a) the items listed in 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 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in
13 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a
14 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; and

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

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

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

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

23 (5) Except as provided in [section 1], the department may refuse to apply any local law or regulation if
24 it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the
25 existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or
26 outside the directly affected government subdivisions."

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28 **Section 5.** Section 75-20-303, MCA, is amended to read:

29 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
30 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

4 (a) an environmental evaluation statement related to the facility being certified. The statement must
5 include but is not limited to:

6 (i) documentation that the proposed facility meets the requirements of [section 1], if applicable; and

7 (ii) analysis of the following information:

8 ~~(i)(A)~~ the environmental impact of the proposed facility; and

9 ~~(i)(B)~~ any adverse environmental effects that cannot be avoided by issuance of the certificate;

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

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

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

14 (e) a statement confirming that notice was provided pursuant to subsection (5); and

15 (f) a statement signed by the applicant showing agreement to comply with the requirements of this
16 chapter and the conditions of the certificate.

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

18 (i) ~~For~~ Except as provided in subsection (4)(a)(ii), for a facility as defined in 75-20-104(8)(a) that is more
19 than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10
20 years.

21 (ii) For a facility as defined in 75-20-104(8)(b) that is also a common carrier pipeline as defined in
22 69-13-101, construction must be completed within 7 years.

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

27 (b) ~~Unless extended,~~ Except as provided in subsection (4)(c), a certificate lapses and is void if the facility
28 is not constructed or if construction of 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)~~ (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state
2 or 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) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(8)(a) and (8)(b),
7 the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the
8 department must designate a 500-foot-wide facility siting corridor along the facility route.

9 (ii) Prior to preparation of the environmental review or the draft environmental impact statement, the
10 department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in
11 which a corridor considered in the environmental review document should be more or less than 500 feet wide.
12 The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is
13 more or less than 500 feet in width, the department shall provide a written justification. The department may not
14 modify a corridor after issuance of the final environmental review document.

15 (b) The department shall provide written notice of the availability of each environmental review document
16 to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental
17 review document, the names and addresses of the property owners must be obtained from the property tax rolls
18 of the county where the property is located. Except as provided in subsection (5)(c), the notice must:

19 (i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a
20 receipt verifying that the property owner received the statement.

21 (ii) inform the property owner that the property owner's property is located within a corridor;

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

23 and

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

26 (c) If there is more than one name listed on the property tax rolls for a single property, the notice must
27 be mailed to the first listed property owner at the address on the property tax rolls.

28 (d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b)
29 are satisfied.

30 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved

1 facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the
 2 affected property owner and all contiguous property owners that would be affected. The submission must include
 3 a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to
 4 the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of
 5 general circulation in the area of the adjustment. The legal notice must specify that public comments on the
 6 adjustment may be submitted to the department within 10 days of the publication date of the notice.

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

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

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

12 (c) An adjustment pursuant to subsection (6)(a) is not subject to:

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

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

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

16 (d) (i) For each facility, the department shall maintain a list of persons who requested to receive
 17 electronic notice of any adjustment submitted pursuant to this subsection (6).

18 (ii) Upon receipt of a submitted adjustment, the department shall:

19 (A) post information about the adjustment on the department's website; and

20 (B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where
 21 information about the adjustment may be viewed."

22

23 **Section 6.** Section 75-20-304, MCA, is amended to read:

24 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
 25 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
 26 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
 27 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
 28 the provisions of 75-20-216 and this part.

29 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of
 30 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as

1 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there
 2 exists an immediate need for construction of a new facility or associated facility or the relocation of a previously
 3 existing facility or associated facility in order to promote the public welfare.

4 (3) ~~(a)~~ Except as provided in subsection (3)(b), the department shall waive compliance with the
 5 requirements of 75-20-301(1)(c), (2)(b), and (2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and
 6 75-20-216(3) relating to consideration of alternative sites if the applicant makes a clear and convincing showing
 7 to the department at a public hearing that:

8 ~~(a)~~(i) a proposed facility will be constructed in a county where a single employer within the county has
 9 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the
 10 employer's operations within the preceding 10-year period;

11 ~~(b)~~(ii) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
 12 located support by resolution the waiver;

13 ~~(c)~~(iii) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased
 14 or been curtailed; and

15 ~~(d)~~(iv) the proposed facility will have a beneficial effect on the economy of the county in which the facility
 16 is proposed to be located.

17 (b) The department may not waive compliance with the requirements of [section 1] for a facility, as
 18 defined in 75-20-104(8)(b), that is also a common carrier pipeline, as defined in 69-13-101.

19 (4) The waiver provided for in subsection (3)(a) applies only to permanent job losses by a single
 20 employer. The waiver provided for in subsection (3)(a) does not apply to jobs of a temporary or seasonal nature,
 21 including but not limited to construction jobs or job losses during labor disputes.

22 (5) The waiver provided for in subsection (3)(a) does not apply to consideration of alternatives or
 23 minimum adverse environmental impact for a facility defined in 75-20-104(8)(a) or (8)(b) or for an associated
 24 facility defined in 75-20-104(3).

25 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request
 26 under subsection (3)(a). However, any payments made under this subsection must be credited toward the fee
 27 paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the
 28 department under subsection (3)(a) can be used in making a certification decision under this chapter.

29 (7) The department may grant only one waiver under subsections (3)(a) and (4) for each permanent loss
 30 of jobs as defined in subsection (3)(a)(i)."

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Section 7. Section 75-20-402, MCA, is amended to read:

"75-20-402. Monitoring. The department shall monitor the operations of all certificated facilities for ensuring continuing compliance with this chapter and certificates issued under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in 75-20-303(3)(b) or (3)(c) and [section 1(1)(c)] to the extent federal funds available for the facility, as determined by the department, have not been provided for those purposes."

NEW SECTION. **Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to [section 1].

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

NEW SECTION. **Section 11. Retroactive applicability -- applicability.** (1) [Section 5] applies retroactively, within the meaning of 1-2-109, to certificates issued after January 1, 2012.

(2) [Sections 1 through 7] apply to certificates issued on or after [the effective date of this act].

- END -