

HOUSE BILL NO. 574

INTRODUCED BY S. BOOKOUT-REINICKE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT PIPELINES DESIGNED TO TRANSPORT HAZARDOUS OR DELETERIOUS SUBSTANCES ARE SUBJECT TO THE REQUIREMENTS OF THE MAJOR FACILITY SITING ACT; ADDING CRITERIA TO BE CONSIDERED IN THE REVIEW OF FACILITIES SUBJECT TO THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-104 AND 75-20-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 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 environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

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

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

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

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

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

11 (8) "Facility" means:

12 (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and
13 Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or
14 capable of:

15 (i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control
16 facilities approved by the department and added to an existing plant;

17 (ii) producing 25 million cubic feet or more of gas derived from coal ~~per~~ each day or any addition thereto,
18 except pollution control facilities approved by the department and added to an existing plant;

19 (iii) producing 25,000 barrels of liquid hydrocarbon products ~~per~~ each day or more or any addition thereto,
20 except pollution control facilities approved by the department and added to an existing plant;

21 (iv) enriching uranium minerals or any addition thereto; or

22 (v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any
23 addition thereto;

24 (b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that
25 would be defined in subsection (8)(a):

26 (i) emitting 300 tons a year of particulate matter at 10 microns or less;

27 (ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing
28 lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;

29 (iii) directly affecting:

30 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

- 1 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;
- 2 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to
3 16 U.S.C. 1531, et seq.; or
- 4 (D) one of the following exclusion areas:
- 5 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;
- 6 (II) national primitive areas;
- 7 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;
- 8 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.;
- 9 or
- 10 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or
- 11 (iv) that would require a permanent workforce greater than 300 workers.
- 12 (c) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,
13 except that the term:
- 14 (i) does not include an electric transmission line and associated facilities of a design capacity of 230
15 kilovolts or less and 10 miles or less in length; and
- 16 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less
17 than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or
18 options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property
19 along the centerline;
- 20 (d) each pipeline, ~~whether~~ and associated facilities if the pipeline is partially or wholly within the state,
21 and 30 miles in length and:
- 22 (i) greater than 17 inches in inside diameter and 30 miles in length; or
- 23 (ii) designed for transportation of a hazardous or deleterious substance, as defined in 75-10-701 and
24 associated facilities;
- 25 (e) any use of geothermal resources, including the use of underground space in existence or to be
26 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
27 power equivalent to 25 million Btu's ~~per an~~ hour or more or any addition thereto, except pollution control facilities
28 approved by the department and added to an existing plant;
- 29 (f) any underground in situ gasification of coal; or
- 30 (g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).

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

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

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

9

10 **Section 2.** Section 75-20-301, MCA, is amended to read:

11 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 45 days after
12 issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(c) and (8)(d), the department
13 shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds
14 and determines:

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

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

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

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

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

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

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

24 (e) that the location of the facility as proposed conforms to applicable state and local laws and
25 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied
26 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
27 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected
28 government subdivisions;

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

30 (g) that the department or board has issued any necessary air or water quality decision, opinion, order,

1 certification, or permit as required by 75-20-216(3); ~~and~~

2 (h) that the use of public lands for location of the facility was evaluated and public lands were selected
3 whenever their use is as economically practicable as the use of private lands; and

4 (i) for a pipeline designed for transportation of a hazardous or deleterious substance, as defined in
5 75-10-701, that the pipeline will not be located within 600 feet of a church or school.

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

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

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

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

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

12 (e) for a pipeline designed for transportation of a hazardous or deleterious substance, as defined in
13 75-10-701, the effect of a leak from the proposed facility on the quality of surface water or ground water;

14 (f) the impact of the proposed facility on private property; and

15 ~~(e)~~(g) any other factors that it considers relevant.

16 (3) Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in
17 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), the department shall approve a facility as proposed or as
18 modified or an alternative to a proposed facility if the department finds and determines:

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

21 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary
22 terms, do not pose any threat of serious injury or damage to:

23 (i) the environment; ~~or~~

24 (ii) the social and economic conditions of inhabitants of the affected area; or

25 (iii) the health, safety, or welfare of area inhabitants.

26 (4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the
27 alternative must:

28 (a) meet the objective of the applicant's proposal;

29 (b) be available to the applicant; and

30 (c) be reasonable and specific to the applicant's proposed site.

1 (5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis
2 for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).

3 (6) For facilities defined in ~~77-20-104(8)~~ 75-20-104(8), if the department cannot make the findings
4 required in 75-20-301, it shall deny the certificate."

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6 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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