

SENATE BILL NO. 42

INTRODUCED BY D. BARRETT

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MAJOR FACILITY SITING LAWS; REQUIRING CONSULTATION WITH APPLICANTS UNDER THE MAJOR FACILITY SITING ACT; MODIFYING AGENCY REPORTING AUTHORITY; MODIFYING CORRIDOR WIDTH AND SELECTION REQUIREMENTS; EXPANDING LANDOWNER NOTICE REQUIREMENTS; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON PROPOSED FACILITY LOCATION ADJUSTMENTS; AMENDING SECTIONS 75-20-216, 75-20-219, 75-20-302, AND 75-20-303, MCA."

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

Section 1. Section 75-20-216, MCA, is amended to read:

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

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

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

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

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

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

~~(3) The department shall:~~

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

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



1 (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within
 2 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit
 3 required under the laws, other than those contained in this chapter, administered by the department. A decision,
 4 opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless,
 5 the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision,
 6 opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a
 7 preliminary decision by the ~~board~~ department and pursuant to rules adopted by the ~~department~~ board, the
 8 department shall provide an opportunity for public review and comment.

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

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

21 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
 22 revenue; and public service regulation and the consumer counsel shall report to the department information
 23 relating to the impact of the proposed site facility on each department's area of expertise. ~~The report may include~~
 24 ~~opinions as to the advisability of granting, denying, or modifying the certificate.~~ The department shall allocate
 25 funds obtained from filing fees to the departments making reports and to the office of consumer counsel to
 26 reimburse them for the costs of compiling information and issuing the required report."
 27

28 **Section 2.** Section 75-20-219, MCA, is amended to read:

29 **"75-20-219. Amendments to certificate.** (1) (a) Within 30 days after notice of an amendment to a
 30 certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the

1 department shall determine whether the proposed change in the facility would result in a material increase in any
2 environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set
3 forth in the certificate.

4 (b) If the department determines that the proposed change would result in a material increase in any
5 environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the
6 department shall grant, deny, or modify the amendment with conditions as it considers appropriate.

7 (c) If the department determines that a modification of the proposed amendment to the certificate is
8 needed, it shall consult with the applicant.

9 (2) In those cases in which the department determines that the proposed change in the facility would not
10 result in a material increase in any environmental impact or would not be a substantial change in the location of
11 all or a portion of the facility, the department shall automatically grant the amendment either as applied for or upon
12 terms or conditions that the department considers appropriate.

13 (3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of
14 showing by clear and convincing evidence that the department's determination is not reasonable.

15 (4) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision,
16 opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must
17 be processed under the applicable statutes administered by the department or board."
18

19 **Section 3.** Section 75-20-302, MCA, is amended to read:

20 **"75-20-302. Conditions imposed.** (1) If the department determines that the location of all or a part of
21 the proposed facility should be modified, it may condition its certificate upon the modification, provided that the
22 department consulted the applicant and the persons residing in the area affected by the modification have been
23 given reasonable notice of the modification.

24 (2) The department may require the applicant to post performance bonds to guarantee successful
25 reclamation and revegetation of the project area."
26

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

28 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
29 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

30 (2) If the department has found that any regional or local law or regulation that would be otherwise

1 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

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

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

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

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

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

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

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

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

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

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

15 (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
16 in 75-20-104(8)(b), construction must be completed within 10 years.

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

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

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

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

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

30 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for For a facility defined in 75-20-104(8)(a) and

1 (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the
2 department must designate a ~~1-mile-wide~~ 500-foot-wide facility siting corridor along the facility route.

3 (ii) Prior to preparation of the environmental review or the draft environmental impact statement, the
4 department shall consult the applicant and identify areas in which a corridor considered in the environmental
5 review document should be more or less than 500 feet wide. The corridor width may not be narrower than the
6 applicant's right-of-way. For each area in which the corridor is more or less than 500 feet in width, the department
7 shall provide a written justification. The department may not modify a corridor after issuance of the final
8 environmental review document.

9 (b) The department shall provide written notice of the availability of ~~the draft~~ each environmental review
10 document to each owner of property within ~~the 1-mile-wide facility siting corridor identified in the environmental~~
11 ~~review as the department's preferred alternative facility siting~~ a corridor. No more than 60 days prior to the
12 availability of ~~the draft~~ each environmental review document, the names and addresses of the property owners
13 must be obtained from the property tax rolls of the county where the property is located. Except as provided in
14 subsection (5)(c), the notice must:

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

17 (ii) inform the property owner that the property owner's property is located within ~~the department's~~
18 ~~preferred alternative 1-mile-wide facility siting~~ a corridor;

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

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

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

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

27 ~~(e) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide~~
28 ~~corridor in accordance with 75-20-301. If the department determines that it will select a facility siting corridor that~~
29 ~~is completely or partially different from the preferred alternative facility siting corridor described in the draft~~
30 ~~environmental review, it shall, before issuing the certificate, provide notice of its intended facility siting corridor~~

1 and an opportunity to comment to property owners within the 1-mile-wide facility siting corridor that deviates from
 2 the preferred alternative. Property owners must be determined and notice must be given in the same manner as
 3 provided in subsection (5)(b).

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

7 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the ~~corridor~~
 8 ~~designated pursuant to subsection (5)~~ approved facility location to the department. The adjustment must be
 9 accompanied by the written agreement of the affected property owner and all contiguous property owners that
 10 would be affected. The submission must include a map showing the approved facility location and the proposed
 11 adjustment. At the time of submission to the department, the adjustment must be accompanied by a copy of a
 12 legal notice published in a newspaper of general circulation in the area of the adjustment. The legal notice must
 13 specify that public comments on the adjustment may be submitted to the department within 10 days of the
 14 publication date of the notice.

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

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

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

20 (c) ~~Siting of a facility within the corridor designated pursuant to subsection (5) or an An adjustment~~
 21 ~~pursuant to subsection (6)(a) is not subject to:~~

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

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

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

25 - END -