

HOUSE BILL NO. 281

INTRODUCED BY G. KIPP III

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ELECTRIC TRANSMISSION LINES AND FOSSIL FUEL PIPELINES FROM BEING LOCATED UNDER WATER BODIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING CONTINGENT APPLICABILITY; AMENDING SECTIONS 69-4-358, 69-13-103, 75-7-112, 75-20-301, AND 77-1-1111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Prohibiting underground water crossings -- policy -- finding -- siting requirements -- rulemaking authority.** (1) The legislature finds that:

(a) locating pipelines and electric transmission lines under water bodies threatens water quality; and

(b) pipelines and transmission lines pose less risk to water quality if the pipeline or transmission line is routed over a water body.

(2) In addition to the policy set forth in 75-5-101, it is the policy of the state to require electric transmission lines and pipelines that transport crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide to be routed over water bodies instead of under.

(3) (a) An electric transmission line or a pipeline that requires a written consent pursuant to Title 75, chapter 7, part 1, a certificate pursuant to Title 75, chapter 20, part 2, or a lease, licence, or easement issued under 77-1-1111 may not cross a water body underground.

(b) Electric facilities allowed under Title 69, chapter 4, part 3, to convert from overhead to underground may not cross a water body underground.

(4) The owner of an electric transmission line or a pipeline shall submit to the department a list of all proposed water body crossings and any other information required by the department on forms developed by the department to meet the requirements of this section.

(5) The board shall adopt rules to:

(a) establish construction requirements for electric transmission lines or pipelines that cross a water body, including:

(i) specifications for casings that resist puncture and cracking; and



1 (ii) management systems that include leak detection and threat identification; and  
 2 (b) establish monitoring and reporting requirements for electric transmission lines or pipelines that cross  
 3 water bodies.

4 (6) The board may adopt any other rules necessary to implement the provisions of this section.

5 (7) This section applies to electric transmission lines and pipelines that transport crude petroleum, coal,  
 6 or the products of crude petroleum or coal or of carbon dioxide.

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8 **Section 2.** Section 69-4-358, MCA, is amended to read:

9 **"69-4-358. Postponement of conversion until certain actions occur.** (1) If a special improvement  
 10 district is established pursuant to this part, the public utility involved shall not be required to commence  
 11 conversion until the ordinance, the assessment roll, and the issuance of bonds have become final and until no  
 12 civil action has been filed or if civil action has been filed, until the decision of the court upon the action has  
 13 become final and is not subject to further appeal.

14 (2) Pursuant to [section 1], electric transmission lines may not cross a water body underground.

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16 **Section 3.** Section 69-13-103, MCA, is amended to read:

17 **"69-13-103. Right to construct pipelines.** (1) ~~The~~ Except as provided in [section 1], the right to lay,  
 18 maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use  
 19 only in connection with the operation of ~~such the~~ lines, or along, across, or under any public stream or highway  
 20 in this state is ~~hereby~~ conferred upon all persons, firms, limited partnerships, joint-stock associations, or  
 21 corporations coming within any of the definitions of common carrier pipelines ~~as hereinbefore made~~. This right  
 22 to run along, across, or over any public road or highway, ~~as provided for,~~ can only be exercised upon condition  
 23 that ~~the traffic thereon~~ not be interfered with and that ~~such the~~ road or highway be promptly restored to its former  
 24 condition of usefulness. The restoration of the road or highway is subject ~~also~~ to the supervision of the county  
 25 commissioners of the county in which ~~said the~~ highway is ~~situated~~ located.

26 (2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to  
 27 construct pipelines and ~~such~~ incidental telephone and telegraph lines along, across, or over any public road or  
 28 highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing  
 29 in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject  
 30 to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges ~~herein~~

1 ~~conferred, such~~ the pipelines shall compensate the county for any damage done to ~~such a~~ public road in the  
 2 laying of pipelines or telegraph or telephone lines along or across the public road ~~same~~. Nothing ~~herein shall be~~  
 3 ~~construed to grant~~ in this part grants any pipeline company the right to use ~~any a~~ public street or alley in ~~any an~~  
 4 incorporated city or town except by express permission from the city or governing authority ~~thereof~~."

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6 **Section 4.** Section 75-7-112, MCA, is amended to read:

7 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a proposed  
 8 project, the district or the district's authorized representative shall, within 10 working days, notify the department  
 9 of the project. If at any time during the review process the supervisors determine that provisions of this part do  
 10 not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors.  
 11 The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the  
 12 department requests an onsite inspection by a team.

13 (2) The supervisors shall call a team together within 20 days of receipt of the request of the department  
 14 for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after  
 15 notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the  
 16 department does not request an onsite inspection within the time specified in this subsection, the supervisors may  
 17 deny, approve, or modify the project.

18 (3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial,  
 19 approval, or modification of the project to the supervisors. The applicant may waive participation in this  
 20 recommendation.

21 (4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team  
 22 recommendations and notify the applicant and team members, within 60 days of the date of application, of their  
 23 decision.

24 (5) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees  
 25 with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors'  
 26 decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final  
 27 written decision regarding the dispute.

28 (b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors'  
 29 decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

30 (i) agree to arbitration under this section and request that an arbitration panel, as provided for in

1 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

2 (ii) appeal the decision of the supervisors to the district court for the county where the project is located.

3 (6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within  
4 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work  
5 may not be commenced on a project before the end of the 15-day waiting period unless written permission is  
6 given by all team members and the district.

7 (7) The supervisors may extend, upon the request of a team member, the time limits provided in  
8 subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes  
9 of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must  
10 be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately  
11 of any subsequent time extensions.

12 (8) Work on a project under this part may not take place without the written consent of the supervisors.

13 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying  
14 a project, shall determine:

15 (a) the purpose of the project; and

16 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed  
17 project. To determine if the project is reasonable, the following must be considered:

18 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the  
19 project and the nature and economics of the various alternatives;

20 (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce  
21 the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

22 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or  
23 downstream;

24 (iv) the effects on stream channel alteration;

25 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of  
26 ground cover; and

27 (vi) the effect on fish and aquatic habitat.

28 (10) If the supervisors determine that a proposed project or part of a proposed project should be modified,  
29 they may condition their approval upon the modification.

30 (11) The supervisors may not approve or modify a proposed project unless the supervisors determine

1 that the purpose of the proposed project will be accomplished by reasonable means.

2 (12) Pursuant to [section 1], a written consent of the supervisors may not be issued if the project proposes  
3 to route an electric transmission line or a pipeline that transports crude petroleum, coal, or the products of crude  
4 petroleum or coal or of carbon dioxide under a stream."

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6 **Section 5.** Section 75-20-301, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

28 (h) that the use of public lands or federally designated energy corridors for location of a facility defined  
29 in 75-20-104(8)(a) or (8)(b) was evaluated and public lands or federally designated energy corridors for that  
30 facility were selected whenever their use was compatible with:

1 (i) the requirements of subsections (1)(a) through (1)(g); and  
 2 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined  
 3 in 75-20-104(8)(a); and

4 (i) the facility does not violate the provisions of [section 1].

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."

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24 **Section 6.** Section 77-1-1111, MCA, is amended to read:

25 **"77-1-1111. Use of beds of navigable rivers -- authorization requirement restricted.** The Except as  
 26 provided in [section 1], the board or the department may require a lease, license, or easement under this part only  
 27 for a footprint on the bed of a navigable river."

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29 NEW SECTION. **Section 7. Contingent applicability.** (1) If any portion of [section 1] is disapproved  
 30 by the federal energy regulatory commission pursuant to 15 U.S.C. 717f, then [section 1] does not apply to the

1 siting of natural gas pipelines.

2 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of  
3 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has  
4 occurred.

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6 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an  
7 integral part of Title 75, chapter 5, part 2, and the provisions of Title 75, chapter 5, part 2, apply to [section 1].

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9 **NEW SECTION. Section 9. Applicability.** [This act] applies to pipelines and electric transmission lines  
10 proposed to cross water bodies on or after [the effective date of this act] and pipelines and electric transmission  
11 lines that cross under a water body and are altered on or after [the effective date of this act].

12 - END -