

HOUSE BILL NO. 486

INTRODUCED BY G. KIPP III

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING FOSSIL FUEL PIPELINES FROM BEING LOCATED UNDER NAVIGABLE LAKES AND STREAMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 69-13-103, 75-7-112, 75-20-301, AND 77-1-1111, MCA; PROVIDING CONTINGENT APPLICABILITY; 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 under water bodies threatens water quality; and

(b) pipelines pose less risk to water quality if the pipeline 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 pipelines that transport crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide to be routed over, rather than under, navigable lakes and streams.

(3) 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, license, or easement issued under 77-1-1111 may not cross a navigable lake or navigable stream underground.

(4) The owner of 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 pipelines that cross a navigable lake or stream including:

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

(ii) management systems that include leak detection and threat identification;

(b) establish monitoring and reporting requirements for pipelines that cross navigable lakes or streams;

and

(c) coordinate with the department of natural resources and conservation to seek a judicial determination



1 of navigability for title for any water body proposed for crossing that has not been adjudicated as navigable for
2 title by a court of competent jurisdiction.

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

4 (7) This section applies to pipelines 10 inches or more in inside diameter that transport crude petroleum,
5 coal, or the products of crude petroleum or coal or of carbon dioxide.

6

7 **Section 2.** Section 69-13-103, MCA, is amended to read:

8 **"69-13-103. Right to construct pipelines.** (1) ~~The~~ Except as provided in [section 1], the right to lay,
9 maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use
10 only in connection with the operation of ~~such the~~ lines, or along, across, or under any public stream or highway
11 in this state is ~~hereby~~ conferred upon all persons, firms, limited partnerships, joint-stock associations, or
12 corporations coming within any of the definitions of common carrier pipelines ~~as hereinbefore made~~. This right
13 to run along, across, or over any public road or highway, ~~as provided for, can only~~ may be exercised only upon
14 condition that ~~the~~ traffic ~~thereon~~ not be interfered with and that ~~such the~~ road or highway be promptly restored
15 to its former condition of usefulness. The restoration of the road or highway is subject ~~also~~ to the supervision of
16 the county commissioners of the county in which ~~said the~~ highway is ~~situated~~ located.

17 (2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to
18 construct pipelines and ~~such~~ incidental telephone and telegraph lines along, across, or over any public road or
19 highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing
20 in writing that in consideration of the right so acquired, it ~~shall be and become~~ becomes a common carrier
21 pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the
22 privileges ~~herein~~ conferred, ~~such the~~ pipelines shall compensate the county for any damage done to ~~such a~~ public
23 road in the laying of pipelines or telegraph or telephone lines along or across the public road ~~same~~. Nothing
24 ~~herein shall be construed to grant in this part grants~~ any pipeline company the right to use ~~any a~~ public street or
25 alley in ~~any an~~ incorporated city or town except by express permission from the city or governing authority
26 thereof."
27

27

28 **Section 3.** Section 75-7-112, MCA, is amended to read:

29 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a proposed
30 project, the district or the district's authorized representative shall, within 10 working days, notify the department

1 of the project. If at any time during the review process the supervisors determine that provisions of this part do
2 not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors.
3 The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the
4 department requests an onsite inspection by a team.

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

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

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

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

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

22 (i) agree to arbitration under this section and request that an arbitration panel, as provided for in
23 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

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

25 (6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within
26 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work
27 may not be commenced on a project before the end of the 15-day waiting period unless written permission is
28 given by all team members and the district.

29 (7) The supervisors may extend, upon the request of a team member, the time limits provided in
30 subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes

1 of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must
2 be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately
3 of any subsequent time extensions.

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

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

7 (a) the purpose of the project; and

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

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

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

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

16 (iv) the effects on stream channel alteration;

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

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

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

22 (11) The supervisors may not approve or modify a proposed project unless the supervisors determine
23 that the purpose of the proposed project will be accomplished by reasonable means.

24 (12) Pursuant to [section 1], a written consent of the supervisors may not be issued if the project proposes
25 to route a pipeline that transports crude petroleum, coal, or the products of crude petroleum or coal or of carbon
26 dioxide under a navigable stream."

27

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

29 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after
30 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department

1 shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds
2 and determines:

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

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

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

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

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

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

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

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

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

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

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

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

24 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined
25 in 75-20-104(8)(a); and

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

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

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

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

- 1 (c) the effects of the economic activity resulting from the proposed facility;
2 (d) the effects of the proposed facility on the public health, welfare, and safety;
3 (e) any other factors that it considers relevant.

4 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in
5 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a
6 proposed facility if the department finds and determines:

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

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

- 11 (i) a violation of a law or standard that protects the environment; or
12 (ii) a violation of a law or standard that protects the public health and safety.

13 (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section,
14 it shall deny the certificate."
15

16 **Section 5.** Section 77-1-1111, MCA, is amended to read:

17 "**77-1-1111. Use of beds of navigable rivers -- authorization requirement restricted.** ~~The~~ Except as
18 provided in [section 1], the board or the department may require a lease, license, or easement under this part only
19 for a footprint on the bed of a navigable river."
20

21 NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an
22 integral part of Title 75, chapter 5, part 2, and the provisions of Title 75, chapter 5, part 2, apply to [section 1].
23

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

27 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of
28 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has
29 occurred.
30

