

1 SENATE BILL NO. 215

2 INTRODUCED BY B. KEENAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT LARGE-SCALE FACILITIES THAT PACKAGE
5 WATER OR WATER-BASED PRODUCTS FOR HUMAN CONSUMPTION ARE SUBJECT TO THE MAJOR
6 FACILITIES SITING ACT; PROVIDING LEGISLATIVE FINDINGS; REVISING THE DEFINITION OF "FACILITY";
7 AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-211, 75-20-301, 75-20-303, AND 75-20-304, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

9

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

11

12 **Section 1.** Section 75-20-102, MCA, is amended to read:

13 **"75-20-102. Policy and legislative findings.** (1) The legislature, mindful of its constitutional obligations
14 under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility
15 Siting Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the
16 protection of the environmental life support system from degradation and provide adequate remedies to prevent
17 unreasonable depletion and degradation of natural resources.

18 (2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful
19 environment for present and future generations, to protect the environmental life-support system from degradation
20 and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and
21 enforcement to attain these objectives.

22 (3) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of
23 this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire,
24 possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of
25 these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

26 (4) The legislature finds that the construction of additional electric transmission facilities, pipeline
27 facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other
28 products. Therefore, it is necessary to ensure that the location, construction, and operation of electric
29 transmission facilities, pipeline facilities, or geothermal facilities are in compliance with state law and that an
30 electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this

1 state without a certificate of compliance acquired pursuant to this chapter.

2 (5) The legislature finds that increasing the capacity of existing transmission lines by replacing less
 3 efficient aging low-voltage transmission lines with higher-voltage lines, installing new conductors to lower
 4 impedance, and adding circuits to existing transmission lines within existing linear corridors reduces energy loss,
 5 conserves energy, and prevents unreasonable depletion and degradation of natural resources. Therefore,
 6 transmission upgrades within existing corridors serve the public interest, convenience, and necessity and
 7 transmission providers are encouraged to construct those transmission upgrades.

8 (6) The legislature finds that the state's sources of high-quality ground water, the perceived abundance
 9 of that ground water, and the relative ease of developing some of that ground water make the state attractive to
 10 large-scale facilities that use the water in products for human consumption. Those facilities may affect the
 11 environment, the economy, and the public health, welfare, and safety. Therefore, it is necessary to ensure that
 12 the location, construction, and operation of these large-scale facilities are in compliance with state law and that
 13 the facilities may not be constructed or operated within this state without a certificate of compliance acquired
 14 pursuant to this chapter.

15 ~~(6)~~(7) The legislature also finds that it is the purpose of this chapter to:

- 16 (a) ensure protection of the state's environmental resources, including but not limited to air, water,
 17 animals, plants, and soils;
- 18 (b) ensure consideration of socioeconomic impacts;
- 19 (c) provide citizens with the opportunity to participate in facility siting decisions; and
- 20 (d) establish a coordinated and efficient method for the processing of all authorizations required for
 21 regulated facilities under this chapter."

22

23 **Section 2.** Section 75-20-104, MCA, is amended to read:

24 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
 25 apply:

26 (1) "Addition thereto" means the installation of new machinery and equipment that would significantly
 27 change the conditions under which the facility is operated.

28 (2) "Application" means an application for a certificate submitted in accordance with this chapter and the
 29 rules adopted under this chapter.

30 (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,

1 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the
2 delivery of the energy form or product produced by a facility.

3 (b) The term does not include a transmission substation, a switchyard, voltage support, or other control
4 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

5 (4) "Board" means the board of environmental review provided for in 2-15-3502.

6 (5) "Certificate" means the certificate of compliance issued by the department under this chapter that
7 is required for the construction or operation of a facility.

8 (6) "Commence to construct" means:

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

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

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

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

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

22 (8) "Facility" means, subject to 75-20-1202:

23 (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,
24 except that the term:

25 (i) does not include an electric transmission line and associated facilities of a design capacity of 230
26 kilovolts or less and 10 miles or less in length;

27 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which
28 the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from
29 more than 75% of the owners who collectively own more than 75% of the property along the centerline;

30 (iii) does not include electric transmission lines that are collectively less than 150 miles in length and are

1 required under state or federal regulations and laws, with respect to reliability of service, for an electrical
 2 generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or
 3 energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm
 4 transmission service to use the grid for which the person planning to construct the line or lines has obtained
 5 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own
 6 more than 75% of the property along the centerline or centerlines;

7 (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or
 8 more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except
 9 for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly
 10 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection
 11 (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission
 12 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited
 13 areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the
 14 transmission network and protect electrical workers and the public.

15 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

16 (vi) does not include an energy storage facility, as defined in 15-6-157;

17 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter
 18 and 50 miles in length, and associated facilities, except that the term does not include:

19 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural
 20 crops or for drinking water; or

21 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person
 22 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
 23 than 75% of the owners who collectively own more than 75% of the property along the centerline;

24 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter
 25 and 30 miles in length, and associated facilities used to transport coal suspended in water;

26 (c) any use of geothermal resources, including the use of underground space in existence or to be
 27 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
 28 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by
 29 the department and added to an existing plant, except that the term does not include a compressed air energy
 30 storage facility, as defined in 15-6-157; or

1 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts
2 of hydroelectric power or more or any addition thereto; or

3 (e) a large-scale plant whose primary purpose is to package water or a water-based product for human
4 consumption, the operation of which would be allowed to consume more than 100 acre-feet of ground water
5 pursuant to a permit or an authorization issued under Title 85, chapter 2.

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

9 (10) "Sensitive areas" means government-designated areas that have been recognized for their
10 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
11 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
12 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
13 parks, monuments, or historic sites.

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

17 (12) "Transmission reliability agencies" means the federal energy regulatory commission, the western
18 electricity coordinating council, the national electric reliability council, and the midwest reliability organization.

19 (13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
20 including but not limited to:

- 21 (a) installing larger conductors;
- 22 (b) replacing insulators;
- 23 (c) replacing pole or tower structures;
- 24 (d) changing structure spacing, design, or guying; or
- 25 (e) installing additional circuits.

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

28

29 **Section 3.** Section 75-20-211, MCA, is amended to read:

30 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall

1 file with the department an application for a certificate under this chapter and for the permits required under the
2 laws administered by the department in the form that is required under applicable rules, containing the following
3 information:

4 (i) a description of the proposed location and of the facility to be built;

5 (ii) a summary of any preexisting studies that have been made of the impact of the facility;

6 (iii) for facilities defined in 75-20-104(8)(a), ~~and (8)(b), and (8)(e)~~, a statement explaining the need for the
7 facility, a description of reasonable alternate locations for the facility, a general description of the comparative
8 merits and detriments of each location submitted, and a statement of the reasons why the proposed location is
9 best suited for the facility;

10 (iv) (A) for facilities as defined in 75-20-104(8)(a), ~~and (8)(b), and (8)(e)~~, baseline data for the primary
11 and reasonable alternate locations; or

12 (B) for facilities as defined in 75-20-104(8)(c), baseline data for the proposed location and, at the
13 applicant's option, any alternative locations acceptable to the applicant for siting the facility;

14 (v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

15 (vi) other information that the applicant considers relevant or that the department by order or rule may
16 require.

17 (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the
18 copy or copies must be available for public inspection.

19 (2) An application may consist of an application for two or more facilities in combination that are
20 physically and directly attached to each other and are operationally a single operating entity.

21 (3) The copy of the application must be accompanied by a notice specifying the date on or about which
22 the application is to be filed.

23 (4) An application must also be accompanied by proof that public notice of the application was given to
24 persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed
25 to be located, by publication of a summary of the application in those newspapers that will substantially inform
26 those persons of the application."
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), and (8)(e)~~, the

- 1 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the
2 department finds 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).
 - 26 (2) In determining that the facility will serve the public interest, convenience, and necessity under
27 subsection (1)(f), the department shall consider:
 - 28 (a) the items listed in subsections (1)(a) and (1)(b);
 - 29 (b) the benefits to the applicant and the state resulting from the proposed facility;
 - 30 (c) the effects of the economic activity resulting from the proposed facility;

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

2 (e) any other factors that it considers relevant.

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

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

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

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

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

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

14

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

16 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
17 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

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

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

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

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

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

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

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

30 (f) a statement signed by the applicant showing agreement to comply with the requirements of this

1 chapter and the conditions of the certificate.

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

3 (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
4 in 75-20-104(8)(b), construction must be completed within 10 years.

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

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

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

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

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

18 (5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant
19 to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting
20 corridor along the facility route.

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

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

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

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

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

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

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

7 (e) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide
8 corridor in accordance with 75-20-301. If the department determines that it will select a facility siting corridor that
9 is completely or partially different from the preferred alternative facility siting corridor described in the draft
10 environmental review, it shall, before issuing the certificate, provide notice of its intended facility siting corridor
11 and an opportunity to comment to property owners within the 1-mile-wide facility siting corridor that deviates from
12 the preferred alternative. Property owners must be determined and notice must be given in the same manner as
13 provided in subsection (5)(b).

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

17 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor
18 designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written
19 agreement of the affected property owner and all contiguous property owners that would be affected. The
20 submission must include a map showing the approved facility location and the proposed adjustment.

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

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

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

26 (c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant
27 to subsection (6)(a) is not subject to:

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

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

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

1

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

3 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
4 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
5 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
6 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
7 the provisions of 75-20-216 and this part.

8 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of
9 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as
10 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there
11 exists an immediate need for construction of a new facility or associated facility or the relocation of a previously
12 existing facility or associated facility in order to promote the public welfare.

13 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c)
14 and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of alternative
15 sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

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

19 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located
20 support by resolution the waiver;

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

23 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility
24 is proposed to be located.

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

28 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum
29 adverse environmental impact for a facility defined in 75-20-104(8)(a), ~~or (8)(b), or (8)(e)~~ or for an associated
30 facility defined in 75-20-104(3).

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

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

7

8 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

9

10 NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the
11 meaning of 1-2-109, to facilities the primary purpose of which is to package water or a water-based product for
12 human consumption and that applied for a permit or an authorization under Title 85, chapter 2, after January 1,
13 2015, but as of [the effective date of this act] have not fully perfected the water right as authorized by the permit
14 or authorization.

15

- END -