

HOUSE BILL NO. 271

INTRODUCED BY B. SMITH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MAJOR FACILITY SITING ACT;
5 ESTABLISHING SITING REQUIREMENTS FOR CERTAIN PIPELINES; REQUIRING THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY TO ESTABLISH CERTAIN REQUIREMENTS FOR PIPELINES; REVISING
7 REQUIREMENTS FOR ISSUING A CERTIFICATE; REVISING THE TIME LIMITS FOR VOIDING CERTAIN
8 CERTIFICATES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 22-3-433, 75-20-301,
9 75-20-303, 75-20-304, AND 75-20-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN
10 APPLICABILITY DATE, AND A RETROACTIVE APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Common carrier pipelines -- siting, cultural, and water protection**
15 **requirements.** (1) A facility as defined in 75-20-104(8)(b) that is also a common carrier pipeline as defined in
16 69-13-101 must be entirely co-located parallel to facilities that are:

- 17 (a) similarly sized and similarly located; and
18 (b) (i) common carrier pipelines as defined in 69-13-101 constructed before [the effective date of this act];
19 or
20 (ii) natural gas transmission pipelines regulated by the federal energy regulatory commission and
21 constructed before [the effective date of this act].

22 (2) A facility as defined in 75-20-104(8)(b) that is also a common carrier pipeline as defined in 69-13-101
23 must be located within easements or rights-of-way that avoid sensitive areas. An applicant shall provide the
24 department with written documentation that the location of the facility complies with the requirements of this
25 subsection.

26 (3) A facility as defined in 75-20-104(8)(b) that is also a common carrier pipeline as defined in 69-13-101
27 must include:

- 28 (a) shutoff valves in locations, determined by the department, to mitigate risks to ground water aquifers,
29 source water protection areas, drinking water, and wellhead protection areas. The department also may require
30 additional valves to mitigate potential risk to sensitive water resources.

1 (b) leak detection methods and systems and a monitoring plan, determined by the department, that
 2 overlap and meet or exceed current applicable industry standards and regulatory requirements for leak detection
 3 thresholds to reduce potential adverse environmental impacts.

4 (4) As used in this section, the term "sensitive areas" has the same meaning as provided in 75-20-104
 5 and includes heritage properties, as defined in 22-3-421, and tribally recognized cultural sites.

6

7 **Section 2.** Section 22-3-433, MCA, is amended to read:

8 **"22-3-433. Environmental review process.** (1) Each (a) Except as provided in subsection (1)(b), each
 9 state agency responsible for the preparation of an environmental impact statement in accordance with the
 10 Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain
 11 the comments of the historic preservation officer concerning the identification and location of heritage properties
 12 and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action.
 13 However, where the grant of an interest in state land requires the preparation of an environmental impact
 14 statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to
 15 an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the
 16 affected state land.

17 (b) When conducting an environmental impact statement on a facility as defined in 75-20-104(8)(b) that
 18 is also a common carrier pipeline as defined in 69-13-101, the state agency responsible for the preparation of
 19 the environmental impact statement shall also evaluate impacts to heritage properties located in, on, under, and
 20 within affected private land.

21 (2) When heritage properties and paleontological remains are located and identified as described in
 22 subsection (1), the responsible state agency, in consultation with the historic preservation officer and the
 23 preservation review board, shall include as part of its environmental impact statement a plan for the avoidance
 24 or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable.
 25 Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or
 26 other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with
 27 the historic preservation officer and the preservation review board."

28

29 **Section 3.** Section 75-20-301, MCA, is amended to read:

30 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after

1 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department
 2 shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds
 3 and determines:

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

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

6 (c) that the facility minimizes adverse environmental impact, considering the state of available technology
 7 and the nature and economics of the various alternatives, and, if applicable, meets the requirements of [section
 8 1(3)];

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

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

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

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

14 (e) except as provided in subsection (5), that the location of the facility as proposed conforms to
 15 applicable state and local laws and regulations and, in the case of a facility as defined in 75-20-104(8)(b) that is
 16 also a common carrier pipeline as defined in 69-13-101, that the facility conforms with the requirements of
 17 [section 1], except that the department may refuse to apply any local law or regulation if it finds that, as applied
 18 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
 19 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected
 20 government subdivisions;

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

22 (g) that the department or board has issued any necessary air or water quality decision, opinion, order,
 23 certification, or permit as required by 75-20-216(3) and [section 1(3)]; and

24 (h) that the use of public lands or federally designated energy corridors for location of a facility defined
 25 in 75-20-104(8)(a) or (8)(b), except as required in [section 1], was evaluated and that public lands or federally
 26 designated energy corridors for that facility were selected whenever their use was compatible with:

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

28 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined
 29 in 75-20-104(8)(a).

30 (2) In determining that the facility will serve the public interest, convenience, and necessity under

1 subsection (1)(f), the department shall consider:

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

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

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

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

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

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

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

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

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

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

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

18 (5) Except as provided in [section 1], the department may refuse to apply any local law or regulation if
19 it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the
20 existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or
21 outside the directly affected government subdivisions."

22

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

24 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
25 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

29 (a) an environmental evaluation statement related to the facility being certified. The statement must
30 include but is not limited to:

- 1 (i) documentation that the proposed facility meets the requirements of [section 1], if applicable; and
- 2 (ii) analysis of the following information:
- 3 ~~(i)(A)~~ the environmental impact of the proposed facility; and
- 4 ~~(i)(B)~~ any adverse environmental effects that cannot be avoided by issuance of the certificate;
- 5 (b) a plan for monitoring environmental effects of the proposed facility;
- 6 (c) a plan for monitoring the certified facility site between the time of certification and completion of
- 7 construction;
- 8 (d) a time limit as provided in subsection (4);
- 9 (e) a statement confirming that notice was provided pursuant to subsection (5); and
- 10 (f) a statement signed by the applicant showing agreement to comply with the requirements of this
- 11 chapter and the conditions of the certificate.
- 12 (4) (a) The department shall issue as part of the certificate the following time limits:
- 13 (i) ~~For~~ Except as provided in subsection (4)(a)(ii), for a facility as defined in 75-20-104(8)(a) that is more
- 14 than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10
- 15 years.
- 16 (ii) For a facility as defined in 75-20-104(8)(b) that is also a common carrier pipeline as defined in
- 17 69-13-101, construction must be completed within 7 years.
- 18 ~~(i)(iii)~~ For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be
- 19 completed within 5 years.
- 20 ~~(i)(iv)~~ For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue
- 21 with due diligence in accordance with preliminary construction plans established in the certificate.
- 22 (b) ~~Unless extended, a~~ Except as provided in subsection (4)(c), a certificate lapses and is void if the
- 23 facility is not constructed or if construction of the facility is not commenced within the time limits provided in this
- 24 section.
- 25 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
- 26 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
- 27 ~~(4)(a)(ii)~~ (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state
- 28 or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.
- 29 (d) Construction may begin immediately upon issuance of a certificate unless the department finds that
- 30 there is substantial and convincing evidence that a delay in the commencement of construction is necessary and

1 should be established for a particular facility.

2 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(8)(a) and (8)(b),
3 the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the
4 department must designate a 500-foot-wide facility siting corridor along the facility route.

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

11 (b) The department shall provide written notice of the availability of each environmental review document
12 to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental
13 review document, the names and addresses of the property owners must be obtained from the property tax rolls
14 of the county where the property is located. Except as provided in 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 a corridor;

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

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

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

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

26 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved
27 facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the
28 affected property owner and all contiguous property owners that would be affected. The submission must include
29 a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to
30 the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of

1 general circulation in the area of the adjustment. The legal notice must specify that public comments on the
2 adjustment may be submitted to the department within 10 days of the publication date of the notice.

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

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

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

8 (c) An adjustment pursuant to subsection (6)(a) is not subject to:

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

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

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

12 (d) (i) For each facility, the department shall maintain a list of persons who requested to receive
13 electronic notice of any adjustment submitted pursuant to this subsection (6).

14 (ii) Upon receipt of a submitted adjustment, the department shall:

15 (A) post information about the adjustment on the department's website; and

16 (B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where
17 information about the adjustment may be viewed."

18

19 **Section 5.** Section 75-20-304, MCA, is amended to read:

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

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

30 (3) (a) The Except as provided in subsection (3)(b), the department shall waive compliance with the

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

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

7 ~~(b)~~(ii) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
 8 located support by resolution the waiver;

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

11 ~~(d)~~(iv) the proposed facility will have a beneficial effect on the economy of the county in which the facility
 12 is proposed to be located.

13 (b) The department may not waive compliance with the requirements of [section 1] for a facility as defined
 14 in 75-20-104(8)(b) that is also a common carrier pipeline as defined in 69-13-101.

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

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

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

25 (7) The department may grant only one waiver under subsections (3)(a) and (4) for each permanent loss
 26 of jobs as defined in subsection (3)(a)(i)."
 27

28 **Section 6.** Section 75-20-402, MCA, is amended to read:

29 **"75-20-402. Monitoring.** The department shall monitor the operations of all certificated facilities for
 30 ensuring continuing compliance with this chapter and certificates issued under this chapter and for discovering

1 and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related
2 to the monitoring plan established in 75-20-303(3)(b) or (3)(c) and [section 1(3)] to the extent federal funds
3 available for the facility, as determined by the department, have not been provided for those purposes."
4

5 NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a
6 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
7 Chippewa tribe.
8

9 NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to [section 1].
11

12 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.
13

14 NEW SECTION. **Section 10. Retroactive applicability -- applicability.** (1) [Section 3] applies
15 retroactively, within the meaning of 1-2-109, to certificates issued on or after January 1, 2012.

16 (2) [Sections 1 through 5] apply to certificates issued on or after [the effective date of this act].
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- END -