

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "FACILITY" IN THE MAJOR  
5 FACILITY SITING ACT TO INCLUDE A BATTERY ENERGY STORAGE SYSTEM; PROVIDING  
6 RULEMAKING AUTHORITY; AMENDING SECTIONS 75-20-104, 75-20-211, 75-20-301, AND 75-20-303,  
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 75-20-104, MCA, is amended to read:

12 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following  
13 definitions apply:

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

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

18 (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,  
19 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the  
20 delivery of the energy form or product produced by a facility.

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

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

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

26 (6) "Commence to construct" means:

27 (a) any clearing of land, excavation, construction, or other action that would affect the environment of  
28 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for

1 nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation  
2 conditions;

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

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

9 (d) the relocation or upgrading of an existing facility defined by subsection (9)(a) or (9)(b), including  
10 upgrading to a design capacity covered by subsection (9)(a), except that the term does not include normal  
11 maintenance or repair of an existing facility.

12 (7) (a) "Commencement of acquisition of right-of-way" means the actual, defined legal transfer of  
13 property.

14 (b) The term does not mean preliminary discussions, option agreements that are not within 60 days of  
15 commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal  
16 transfer of property.

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

18 (9) "Facility" means, subject to 75-20-1202:

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

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

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

27 (iii) does not include electric transmission lines that are collectively less than 150 miles in length and  
28 are required under state or federal regulations and laws, with respect to reliability of service, for an electrical

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

6 (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or  
7 more to increase that line's capacity, including construction outside the existing easement or right-of-way.

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

14 (v) does not include a transmission substation, a switchyard, voltage support, or other control  
15 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  
18 diameter 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  
28 derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities

1 approved by the department and added to an existing plant, except that the term does not include a  
2 compressed air energy storage facility, as defined in 15-6-157; ~~or~~

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

5 (e) a battery energy storage system with a capacity of 5 megawatts or greater, not including a  
6 pumped hydroelectric storage system, that stores electric charge by using specially developed batteries and is  
7 tied to the grid.

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

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

16 ~~(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly~~  
17 ~~located and designed for voltage regulation, circuit protection, or switching necessary for the construction or~~  
18 ~~operation of a proposed transmission line.~~ "Transmission reliability agencies" means the federal energy  
19 regulatory commission, the western electricity coordinating council, the national electric reliability council, and  
20 the midwest reliability organization.

21 ~~(13) "Transmission reliability agencies" means the federal energy regulatory commission, the western~~  
22 ~~electricity coordinating council, the national electric reliability council, and the midwest reliability organization.~~  
23 "Transmission substation" means any structure, device, or equipment assemblage, commonly located and  
24 designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a  
25 proposed transmission line.

26 (14) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions  
27 including but not limited to:

28 (a) installing larger conductors;

- 1 (b) replacing insulators;
- 2 (c) replacing pole or tower structures;
- 3 (d) changing structure spacing, design, or guying; or
- 4 (e) installing additional circuits.

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

7

8 **Section 2.** Section 75-20-211, MCA, is amended to read:

9 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant  
10 shall file with the department an application for a certificate under this chapter and for the permits required  
11 under the laws administered by the department in the form that is required under applicable rules, containing  
12 the following information:

- 13 (i) a description of the proposed location and of the facility to be built;
- 14 (ii) a summary of any preexisting studies that have been made of the impact of the facility;
- 15 (iii) for facilities defined in 75-20-104(9)(a), ~~and (9)(b)~~, and (9)(e), a statement explaining the need for  
16 the facility, a description of reasonable alternate locations for the facility, a general description of the  
17 comparative merits and detriments of each location submitted, and a statement of the reasons why the  
18 proposed location is best suited for the facility;

19 (iv) (A) for facilities as defined in 75-20-104(9)(a) and (9)(b), baseline data for the primary and  
20 reasonable alternate locations; or

21 (B) for facilities as defined in 75-20-104(9)(c) and (9)(e), baseline data for the proposed location and,  
22 at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

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

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

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

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

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

5           (4) An application must also be accompanied by proof that public notice of the application was given  
6 to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively  
7 proposed to be located, by publication of a summary of the application in those newspapers that will  
8 substantially inform those persons of the application."  
9

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

11           **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days  
12 after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(9)(a) and (9)(b), the  
13 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the  
14 department finds and determines:

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

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

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

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

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

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

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

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

- 1 (f) that the facility will serve the public interest, convenience, and necessity;
- 2 (g) that the department or board has issued any necessary air or water quality decision, opinion,  
3 order, certification, or permit as required by 75-20-216(3); and
- 4 (h) that the use of public lands or federally designated energy corridors for location of a facility defined  
5 in 75-20-104(9)(a) or (9)(b) was evaluated and public lands or federally designated energy corridors for that  
6 facility were selected whenever their use was compatible with:
  - 7 (i) the requirements of subsections (1)(a) through (1)(g); and
  - 8 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility  
9 defined in 75-20-104(9)(a).
- 10 (2) In determining that the facility will serve the public interest, convenience, and necessity under  
11 subsection (1)(f), the department shall consider:
  - 12 (a) the items listed in subsections (1)(a) and (1)(b);
  - 13 (b) the benefits to the applicant and the state resulting from the proposed facility;
  - 14 (c) the effects of the economic activity resulting from the proposed facility;
  - 15 (d) the effects of the proposed facility on the public health, welfare, and safety;
  - 16 (e) any other factors that it considers relevant.
- 17 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-  
18 104(9)(c) or (9)(e), the department shall approve a facility as proposed or as modified or an alternative to a  
19 proposed facility if the department finds and determines:
  - 20 (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant  
21 environmental impacts; and
  - 22 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in  
23 monetary terms, will not result in:
    - 24 (i) a violation of a law or standard that protects the environment; or
    - 25 (ii) a violation of a law or standard that protects the public health and safety.
- 26 (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this  
27 section, it shall deny the certificate."  
28

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

2           **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
3 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

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

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

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

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

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

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

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

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

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

19           (i) For a facility as defined in 75-20-104(9)(a) that is more than 30 miles in length and for a facility  
20 defined in 75-20-104(9)(b), construction must be completed within 10 years.

21           (ii) For a facility as defined in 75-20-104(9)(a) that is 30 miles or less in length, construction must be  
22 completed within 5 years.

23           (iii) For a facility as defined in 75-20-104(9)(c) or (9)(e), construction must begin within 6 years and  
24 continue with due diligence in accordance with preliminary construction plans established in the certificate.

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

27           (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the  
28 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and



1 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or  
2 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

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

6 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(9)(a) and  
7 (9)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the  
8 department must designate a 500-foot-wide facility siting corridor along the facility route.

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

15 (b) The department shall provide written notice of the availability of each environmental review  
16 document to each owner of property within a corridor. No more than 60 days prior to the availability of each  
17 environmental review document, the names and addresses of the property owners must be obtained from the  
18 property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice  
19 must:

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

22 (ii) inform the property owner that the property owner's property is located within a corridor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

28 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

