

48TH LEGISLATIVE SESSION

MINUTES OF  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

February 2, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Wednesday, February 2, 1983 at 1:00 p.m. in Room 405, State Capitol, Helena, MT.

ROLL CALL: Roll was called with all members of the Committee being present.

SENATE BILL 275: An act to generally revise the Major Facility Siting Act. Senator Dover noted there was a large crowd and that time for proponents and opponents would have to be somewhat limited to allow time for committee questions. He opened the hearing by calling on Senator Thomas Keating, sponsor. Senator Keating outlined the bill, stating there are three major revisions proposed. They are: 1. regarding alternate sites for a facility, the proposed change is to delete the requirement for environmental studies on the alternate site, not on the primary location. It does not do away with the environmental study, but requires a base line study. 2. Deals with the proof of need for a non-utility, A public utility as part of building a new facility must show a need. A non-utility should be a business decision to determine need for the product and whether a plant will pay for itself out of sale of the product. To require businesses to meet this is taking a business decision from the investors and leaving it with the government. This bill is doing away with the proof of need of product for a non-utility. 3. It deletes the requirement that the applicant prove that there is no alternate energy to be used for the product. It shouldn't be required of private investors to prove that alternate energy could be used. There are other minor changes to the act; those are the major changes.

PROPOSERS: Chairman Dover called for proponents to the bill.

David Kasten, Brockway, representing himself and People for Economic Progress spoke, stating it is to the advantage of the businesses to pick their major site, and he believed the bill to be a step in the right direction. Mr. Kasten presented a prepared statement from People for Economic Progress by Herbert Larsen, Secretary to enter into the record, attached as Exhibit '2'.

Dave Johnston, Vice President, Local Operating Engineers 400, stated they are in support of SB 275. Their testimony for the bill is the same as that of WETA (Western Environmental Trade Association), and Mr. Johnston read that into the record for both organizations, attached as Exhibit '3'.

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SB 275 (cont.)

Larry Anderson, Chester, farmer and former County Commissioner said as a farmer he had heard nothing about the act, however as a Commissioner he had experience with the act. Chester was considered as a possible alternate site because of having water. He became aware of the alternate site requirements and tried to tell people that it was simply being considered for alternate site, and they wouldn't listen, or accept this. There was speculation, many people entered businesses and growth spread in the community, it overdeveloped because of this speculation and has had a negative impact on their community now. He is in favor of the bill.

Bonnie Tippy, Montana Coal Council referred to a draft of proposed rules and regulations for the Major Facility Siting Act prepared by the Department of Natural Resources. She stated these proposed rules go into great depth for questions to be asked of residents of the communities for alternate sites. They will ask as to dwelling appliances, annual fuel consumption, ascertain the number of dwelling units, insulation, fuel used, all in determining alternative energy sources. There is also a section asking for appliances now in use, the heating system, water heater, and the list continues on. This would all be very difficult and expensive for a company to gather this information, and makes it difficult for companies that want to locate in Montana. The new bill would end these studies, except it would require that companies adhere to rules for a natural and healthy environment.

Jim Mockler, Montana Coal Council, stated there has been \$360 Million dollars spent, and it is approaching \$2 Billion due to delays and law suits. He referred to the BPA power line, and said because it appeared the only way it would be built without excessive delay and costs was to have the federal government do the line, which left very little tax base for Montana from the line. He said the existing act is fine if it is the intent of the legislature and people in Montana to have useless studies and delays in time, however if the people only want the environment protected, even with the amendment, the act would still do that. He has been told that if this bill passes it would actually help industry rather than the other way around, and the environment will still be protected. The intent of the bill as he was told is to help the siting of major facilities within Montana. Witness statement, is Ex. '4', no testimony included.

Mike Fitzgerald, President of Montana International Trade Commission, presented an independent study of the Montana Major Facility Siting Act done for them by Western Analysis of Helena, entitled Some Perspectives on Environmental Regulation in Montana, submitted in 1981. This is attached as Exhibit '5'. He then referred to page 15 of that report

(SB 275, cont.)

to the section entitled Need Determination. In the act the need for a facility was not defined, but speaks to least cost and most available technology, and determination of the need of the facility that will serve the public interest, convenience and necessity. The law was put in place so people could have strong environmental laws, and there have been changes since 1979. Generally speaking, he also supports strong environmental laws in Montana, and also that there should be room for streamlining those laws as new facts become available. He stated people generally do want the development, such as coal, but they also want to be protected. There is a need for other facilities, however the decline in applications appears to be due to water availability now in this state. He presented this study as testimony, attached as Exhibit '5'.

Maxine Johnson, Director, Coal Council, stated the best hope for the 1980's is the mining industry. Montana does have mineral sources for development and the average annual earnings in mining are higher than other industries. Montana has lost five industrial businesses and the job base has declined. We need to build the job base. The Major Facility Siting act hasn't been tested since Colstrip, but the final process takes 22 months. It is estimated the entire process would take five years now, and this would increase the cost of a facility 46%. It cost \$730 Million for a \$430 Million facility. She proposed a study to determine the possibility of site banking for major facilities. She has visited with industry and government officials and they like the concept. Sites could be determined by industrial suitability, and they wouldn't have to keep coming in to look at two or three site possibilities. Montana Power had to look at 20 sites.

Joe Rossman, representing the Teamsters, stated they were in favor as it would also supply additional employment.

Mike Zimmerman, Montana Power Co., stated they are in support of this bill.

Joe Martin merely spoke in favor.

Gene Phillips, Kalispell, Pacific Power and Light Co stated they are in favor of SB 275. He stated with respect to the adoption of rules proposed by the Dept. of Natural Resources, that there might want to be some amendment to adoption of those rules. As stated by Bonnie Tippy, no one knows what uses can be made of the studies they propose.

Janella Fallan, Montana Chamber of Commerce, stated they would like to be on record as supporting this bill.

There were no further proponents.

SB 275, (cont.)

OPPONENTS:

Chairman Dover inquired if there were opponents wishing to speak. Nick Golder, Forsyth, stated that even though these projects give people jobs, it is a waste to have them started and not be needed, or worse stopped after being nearly completed. His testimony is attached, Exhibit '6'.

Mike Stevens, Montana Cities and Counties, stated there needs to be clarification of how the bill affects local governments and where their authority starts or stops.

Leo Berry, Director of the Dept. of Natural Resources stated the Department opposes SB 275. They are in the process of drafting the rules mentioned, they have not been adopted, and that necessary changes could be made through rule making, and he did not believe it necessary to change the siting act. His testimony is attached as Exhibit '7'.

Jim Flynn, Dept. of Fish, Wildlife & Parks spoke in opposition. Their primary concern is page 19, lines 5 through 14, where their department is eliminated from participation. They would prefer to retain participation. His testimony is attached as Exhibit '8'.

Don Reed, Montana Environmental Information Center, stated they objected to not having alternate site studies, , and not allowing departments to have input to the Board for their decision. His testimony is attached as Exhibit '9'.

Jim McNairy, Alternative Energy Resources Organization, of Billings, known as AERO, stated they have members who are concerned with energy conservation and renewable energies. The Siting Act is an important tool to ensure there are not adverse effects on the environment and they oppose changing it. His testimony is attached, Exhibit '10'.

Tim Stearns, Northern Plains Resource Council stated their organization objected to the change that no need would be shown for a facility.

Nell Kubesh, from Dawson County, asked to leave the facility siting act as it is, as it has been effective in protecting the public right to participate in protecting agricultural land. Her testimony is attached, Exhibit '11'.

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SB 275 (cont.)

Irene Moffett, Fallon, Mont., Dawson County, President of the Dawson County Farmers Union Local, stated this bill would delete proving a need for a facility and choice of sites. Her testimony is attached, Exhibit '12'.

Sandra Ekberg, Great Falls, Montana Farmers Union representative also entered objection to the bill because it deletes the alternate site choice.

Rose Magnuson, Missoula, representing herself, stated she objects to leaving out the alternative energy need because of environmental effects and tying our capital up in consumptive energy. Her testimony is attached, Exhibit '13'.

Cathy Campbell, Helena, spoke for the Montana Association of Churches, stating they represent nine denominations, and have adopted an Energy and Environment position paper in which they encourage the strengthening of the Major Facility Siting Act. Her testimony and the position paper are attached as Exhibit '14'.

Karen Strickler, Montana League of Women Voters stated they would like to be on record as objecting to SB 275 for the reasons stated by the previous opponents.

Hearing was closed on SB 275 and Chairman Dover inquired if Committee members had any questions.

Senator Shaw inquired as to reference to a facility being built and then it is found the facility is not needed, and who would pay for such things and how. Senator Keating stated that a public utility would be a product that a consumer would buy, that the Public Service Commission bases the rates on the assets of the corporation, and the consumer pays for that facility by paying utility bills. This bill does not do away with the requirement of need of a public utility and they will have to justify on the basis of need. If a private investor builds a plant and if the product doesn't sell, then his stockholders lose, and the consumer doesn't pay because they are not obligated to buy the product.

Senator Eck inquired as to what happens on a plant built with a sizeable federal subsidy, and whether they would also be removed from the requirements of the act. Senator Keating gave an example of what can happen in these cases. In Colorado and Utah, oil production was taxed highly. Then it was also felt that uranium would be the cheapest form of energy. Plants were started and subsequent federal requirements added to the costs and they were stalled and this became

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SB 275 (cont.)

a prohibitively expensive form of energy and that's why it failed. Then there was legislation of natural gas, oil and coal, the price went up and there was a decrease in consumption, and this added to the supply because it was not being used and it brought out other forms that were competitive, and made alternate forms more useable. Ten years ago we were told by the federal government we had to use a certain form and when that appeared wrong, it went back to the private sector. Senator Eck stated that perhaps it might be the other way around, that there would be more unuseable plants if we don't look at the proper alternatives. Senator Keating stated recently organizations have said they want solar energy, but there isn't the technology now to produce enough power to compete with known sources, and an example is the wind generators at Livingston, where to produce enough energy with these generators it would take 80 acres of towers.

Senator Mohar inquired further of Mr. Anderson regarding the problems in Chester being brought about because the area was being considered as an alternate site and whether site banking would have worked better. Mr. Anderson stated whatever site is chosen there would have to be many studies done.

Senator Shaw inquired of Mr. Berry how many people are in his Department, Mr. Berry stated there are 240. Senator Shaw inquired if these changes would have an affect on their department, Mr. Berry stated they would have to address the issues, the rules are in the preliminary stages, however this bill will have an impact on the time frame under which the department would be working. Senator Shaw inquired of Mr. Reed as to what organization he represents, Mr. Reed stated they are a public lobbying organization representing 1300 members around the state.

Senator Van Valkenburg inquired of Mike Zimmerman of Montana Power as to their reason for supporting this bill. Mr. Zimmerman stated they support the bill because it streamlines the facility siting act and would ultimately reduce the cost of facilities. Montana Power also believes this bill does not affect Montana Power. Senator Van Valkenburg inquired if this affected Colstrip, Mr. Zimmerman stated there were 20 sites studied and the Dept. has those alternate site studies now.

Senator Van Valkenburg inquired of Mr. Golder for comments. Mr. Golder stated he lives at Colstrip, that he didn't believe unit 4 was needed for electricity in the first place. Senator Story stated he didn't understand this statement, that sites 3 & 4 went through 7 years of hearings and determination was the power was needed.

Vice Chairman Etchart chaired the meeting during this time

SB 275 (cont.)  
while Senator Dover testified at another committee.

Mr. Golder was asked further questions. He said the study was not nearly that long. It was more like two years, and apparently it seemed a good idea to have the facility, as Great Falls and Butte also had communities that could take the facility. The facility siting act has been amended several times and now it would have done a more effective job of screening, and he believed it was used as an example to show need.

Senator Eck inquired if the power plant is built in North Dakota, would a transmission line come into the state that wouldn't be covered? Also whether our electricity going out of state would be covered? She said the definition of associated facilities on page 3 talks about remaining in Montana. It was pointed out that only the portion of the facility in Montana on that project would be affected, we have no control over the North Dakota portion.

Senator Eck also asked regarding the size of lines, and that it now goes up to 115 kilovolts, that there is a problem in the area of Bozeman with this portion and this may apply to their case. Senator Keating answered that the purpose of this was exemption of local lines from the facility siting act, such as an REA line that could be above 69 kilovolts and more than ten miles long.

Senator Halligan commented that perhaps this bill will show that Montana will be more receptive to industry and to the economic climate. This will make the process more streamlined.

Senator Keating stated he supports environmental protection and minimum impact on the environment, however if we want to develop our natural resources, these amendments will benefit that process.

Senator Van Valkenburg asked Mr. Berry as to project applications, Mr. Berry stated that the only major facilities have been Colstrip and Kootnai Falls. No major projects have been applied for since 1975 as the facts have been shown the energy hasn't been needed. Montana power applied in 1982 and has moved the process to 1996 because power simply is not needed. Senator Story stated perhaps it hadn't been a mistake on the approval of the Colstrip project, that the recession has made the change, that people have been turning lights out and using conservation. He said that the advent of hydrogen power would make them all obsolete, but if the economics heats up, there will be a demand for electricity.

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SB 275 (cont.)

Senator Dover inquired as to hearing that the power may not all be used in Montana from Colstrip, and that the papers have reported maybe 30% will go to Montana. He inquired also as to the make up of WHOOPS, whether this is private or a public organization. Senator Keating stated they are a combination, federal, state and private, a joint venture of all three. The project was financed through bonds.

Senator Mohar inquired of Bonnie Tippy regarding her listing of requirements for determining need, and the point that these are not needed for private utilities. Mrs. Tippy stated she had been talking about private business, and they shouldn't be forced by the state to do those involved studies.

There were no further questions and hearing was closed.

There being no further business to come before the committee the meeting was duly adjourned at 2:55 pm.



SENATOR HAROLD L. DOVER, CHAIRMAN  
SENATE NATURAL RESOURCES COMMITTEE



Patricia Hatfield  
Committee Secretary



ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2-2-83

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NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓		
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓		
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

DATE 2-2-83

COMMITTEE ON

Natural Resources

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jim Mockler	MT. Coal Council	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ernie Lipp	MT Coal Council	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David H. Koster ✓	People for Economic Progress	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David H. Koster	Rancher	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Betty Koster	Rancher	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wald Skanaha	Montana Land	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mike Zimmerman	MPLO	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mike Skanaha	MT. Trade Union	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ferry Anderson	Farmer	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Harris Sandberg	Teacher	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Karen Stricker	MT LWV	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Grace Edwards	NPRC	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sandra Ekberg	Montana Farmers Union	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GENE PHILLIPS	PACIFIC POWER & LIGHT	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DON REED	MEIC		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jim McNaary	AERO	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
David F. Johnston ✓	Operating Engineers Local 400	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tim Stearns	NPRC		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jim Flynn	DEPT FWP		<input type="checkbox"/>	<input checked="" type="checkbox"/>
John D. Miller	NPRC	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nick Golden	NPRC	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mike Steph	MAG	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Don Williams	Dept. of Health	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Janell Fullan	Mount Chamber	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pat Wilson	Montco/Turkey Energy	SB 275	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roe Magnusson	Private Citizen	SB 275	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DATE 2-28-83

COMMITTEE ON Senate Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>Franklin Grosfield</i>	<i>Rancher - Self</i>	<i>SB275</i>	<i>X</i>	
<i>Reddy Thompson</i>	<i>Rancher - Self</i>	<i>SB 275</i>	<i>X</i>	

(Please leave prepared statement with Secretary)

SB No. 275

INTRODUCED BY KEATING, PAVLOVICH, SHAW, TVEIT, ABRAMS, DEVLIN,  
KOLSTAD, M. HANSON, SWITZER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; REDEFINING UTILITY; SPECIFYING THAT A CERTIFICATE OF PUBLIC NEED IS NOT REQUIRED FOR A NONUTILITY FACILITY; DELETING THE REQUIREMENT FOR ALTERNATE SITE STUDIES AND ALTERNATE ENERGY STUDIES; REDUCING TIMES ALLOWED FOR EVALUATION OF STUDIES; SPECIFYING HOW FEES PAID ARE TO BE USED; DIRECTING FINES AND PENALTIES TO BE PAID TO THE GENERAL FUND; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-105, 75-20-112, 75-20-201, 75-20-211 THROUGH 75-20-220, 75-20-222, 75-20-301, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-408, 75-20-501 THROUGH 75-20-503, 75-20-1202, and 75-20-1205; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or

operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter."

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

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

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

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

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility located in Montana, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility or, in the case of a utility, a certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:  
(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in

The types of certificates required to be obtained by various entities are set forth in the definition of "certificate" in Section 75-20-104(6).

This change would make it clear that only associated facilities located within the State of Montana are covered by the act.

This change would provide that only a utility would have to obtain a certificate of public need. On the other hand, a private business would be risking its own investment, would have made its own determination of the need for the facility as reflected in its decision to make the investment and consequently, would only be required to obtain a certificate of environmental compatibility.

securing geological data, including necessary borings to ascertain foundation conditions;

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

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

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

(8) "Cost" means the estimated cost in dollars at the time of proposed construction of a facility or associated facility located in Montana.

Definition provides a concrete time for the estimation of cost and will be used in calculating fees.

~~(8)~~ (9) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(9)~~ (10) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(10)~~ (11) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto, except pollution control

facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of \$10 million;

(ii) producing 25 million cubic feet or more of pipeline quality gas derived from coal per day or any addition thereto having an estimated cost in excess of \$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million;  
or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of \$10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 115 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and more than 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection ~~(10)~~ (11)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of \$750,000;

(e) any underground in situ gasification of coal.

~~(11)~~ (12) "Person" means any indi-

Size of the facility is the only relevant factor that should be considered. Cost should not be a factor whether it be \$10 or \$10 million.

Change clarifies that the gas is of commercial quality.

The present law appears to exempt 230 kv lines if over 10 miles in length. Change would include all lines over 115 kv over 10 miles in length.

vidual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

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

{13} (14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use. a person furnishing energy within Montana and subject to rate of return or rate regulation by a state or federal regulatory body or protected from competition through a guaranteed monopoly of service in a given service area."

Section 3. Section 75-20-105, MCA, is amended to read:

"75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter, including but not limited to:

{1} rules governing the form and content of applications;

{2} rules further defining the terms used in this chapter;

{3} rules governing the form and content of long-range plans;

{4} any other rules the board considers necessary to accomplish the purposes and objectives of this chapter."

Section 4. Section 75-20-112, MCA, is amended to read:

"75-20-112. Moneys to earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities

DNRC has the power to implement the act and the list is irrelevant.

Fines and penalties should go to the general fund just as they do with other regulatory agencies, e.g., Dept. of Health State Lands. Refer to 75-20-408(5), page 37.



under this chapter."

Section 5. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required -- operation in conformance -- approval by popular vote of certificate for nuclear facility. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

Same as comment for  
75-20-102.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state."

Section 6. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application -- filing and contents -- proof of service and notice. (1)(a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

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

(ii) a summary of any studies which have been made of the environmental impact of the facility;

~~(iii)~~ a statement explaining the need for the facility;

~~(iv)~~ (iii) for facilities described in 75-20-104(11)(b) a description of reasonable alternate locations for the proposed facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

~~(v)~~ (iv) baseline data for the primary and reasonable alternate locations location;

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

~~(vii)~~ (vi) such other relevant information as the applicant considers relevant submits or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

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

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility may be located, both as primarily and as alternatively proposed and on the following state government agencies:

Provides that powerlines only provide information for alternate sites.

Alternate site studies are an expensive and time consuming waste in addition to having the effect of creating undue anxiety on areas for no good reason. EIS's are available on various areas and could be used by the department for environmental comparison should they so desire such information.

- (a) environmental quality council;
- (b) department of public service regulation;
- (c) department of fish, wildlife, and parks;
- (d) department of state lands;
- (e) department of commerce;
- (f) department of highways;
- (g) department of revenue.

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

(5) An application shall also be accompanied by proof that public notice was given to persons residing in the area ~~or alternative~~ areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 7. Section 75-20-212, MCA, is amended to read:

"75-20-212. Cure for failure of service. ~~Inadvertent~~ failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

Section 8. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If

the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department documents to the applicant as determines necessary, or the department may require a new application and filing fee.

Reduces the ability of the department to draw at their whim on a blank check as it now can.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive."

Section 9. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(10) (11) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such available and relevant information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5% reduction of the filing fee required under 75-20-215."

Self-explanatory

Section 10. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee shall be deposited in

the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) 2% of any estimated cost up to \$1 million; plus	-----	\$20,000
(ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus	-----	\$190,000
(iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus	-----	\$400,000
(iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus	-----	\$500,000
(v) .125% of any amount of estimated cost over \$300 million; plus	-----	\$875,000
(vi) <u>.05% of any amount over \$1 billion.</u>		<u>\$1,985,000</u>

(b) The department may allow in its discretion shall grant a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department documents to the applicant determines that it is necessary to carry out its responsibilities under this chapter.

(2)(a) The department may contract with an applicant for the development of information, provision of services and payment of fees re-

\$1,985,000 should be enough money to evaluate the studies of any project. As proposed a \$5 billion project would provide about \$4 million in fees. These fees are used by DNRC to evaluate materials submitted by the applicant.

quired under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the

department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 11. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection

(3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health and the board of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any deci-

Time to someone proposing a major expenditure is very costly. One year should be ample to review data and make a decision especially considering that there will be less data.

sion, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(e)(b). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months 1 year following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) (11) and for a facility as defined in (b) and (e)

Alternate Sites.

Alternate Sites.



of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis, if any, prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 12. Section 75-20-217, MCA, is amended to read:

"75-20-217. Voiding an application. An application may be voided, following notice and an opportunity for a hearing, by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as provided in 75-20-215."

Information should be factual in nature and Departments should not adopt an adversarial role. DNRC can still provide opinions, etc., to the Board as provided by 75-20-218.

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Section 13. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104~~(10)~~ (11), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 14. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall deter-

mine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternatives as set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board under subsection (4) determines that a hearing is required because the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in any a material increase in any environmental impact or would not be a

Changes would clarify that only changes to a facility that would have an effect on the environment need go through additional detailed review.

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substantial change in the location of all or a portion of the facility, and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in any a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application.

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health."

Section 15. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner -- restrictions -- duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no

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issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 96 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 16. Section 75-20-222, MCA, is amended to read:

"75-20-222. Record of hearing -- procedure -- rules of evidence -- burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding

held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the ~~procedural~~ rules adopted by the board."

Section 17. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board -- findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility, if a utility facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature

and economies of the various alternatives;

(d) each of the criteria listed in 75-20-503;

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

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

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

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

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economies, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

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

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) for facilities as described in 75-20-104(1)(b) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section,

75-20-103 states: "This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect."

75-20-401(1) states: "(1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility . . .

This section is in direct conflict.

Powerlines



the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

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

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

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

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

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 18. Section 75-20-303, MCA, is amended to read:

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

~~(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.~~

~~(3) (2) Any certificate issued by the board shall include the following:~~

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

(i) the environmental impact of the proposed facility;

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

(iii) problems and objections raised by other federal and state agencies and interested groups;

~~(iv) alternatives to the proposed~~

This could mean anything DNRC wanted it to mean.

Sec. 75-20-103 and 75-20-401(1). See page 21.

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facility;

~~(v)~~ (iv) a plan for monitoring environmental effects of the proposed facility; and

~~(vi)~~ (v) a time limit as provided in subsection ~~(4)~~ (3), during which construction of the facility must be completed;

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

~~(4)~~ (3) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) ~~or (e)~~ of 75-20-104~~(7)~~(11) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) ~~or (e)~~ of 75-20-104~~(7)~~(11) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

~~(5)~~ (4) The provisions of subsection ~~(4)~~ (3) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

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

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the

Improper reference in current law.

board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

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

(3) The board shall waive compliance with the requirements of subsections (2)(e), (3)(b), and (3)(e) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

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

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

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

(d) the proposed facility will have a beneficial effect on the

Sections refer to alternate site waiver under certain conditions and sections would no longer be appropriate.

economy of the county in which the facility is proposed to be located.

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

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

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

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

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

"75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and

preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection ~~(3)(2)(a)(v)~~ (iv) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes."

Section 21. Section 75-20-403, MCA, is amended to read:

"75-20-403. Revocation or suspension of certificate. A certificate may be revoked or suspended by the board following notice and opportunity for a hearing:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department."

Section 22. Section 75-20-405, MCA, is amended to read:

"75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate beneficial use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state."

DNRC has nothing to do with safety standards and should not.

What is legitimate use?

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Section 23. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter -- civil action by attorney general. (1)(a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than \$10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in ~~subsections~~ subsection (1) or (2), whenever the department determines that a person is violating ~~or is about to violate~~ any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued

hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the ~~earmarked revenue fund for the use of the department in administering this chapter~~ state general fund."

Conforms with other regulatory agency law.

Section 24. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted -- contents -- available to public. (1) Each ~~utility~~ and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by April 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the ~~utility or person whose~~ when construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the a utili-

Sen. Nat. Res  
2.2.83

ty of person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

It may be assumed that these are interested persons.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department."

Section 25. Section 75-20-502, MCA, is amended to read:

"75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed



facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate."

Section 26. Section 75-20-503, MCA, is amended to read:

"75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

- (1) energy needs: requirements;
  - (a) growth in demand and projections of need;
  - (b) availability and desirability of alternative sources of energy;
  - (c) availability and desirability of alternative sources of energy in lieu of the proposed facility;
  - (d) promotional activities of the utility which may have given rise to the need for this facility;
  - (e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;
  - (f) conservation activities which could reduce the need for more energy;
  - (g) research activities of the utility of new technology available to it which might minimize environmental impact;
- (2) land use impacts:

Alternate energy studies are expensive, useless and if taken to the degree DNRC desires, ridiculous.

For the most part, such information is priority in nature and unavailable to the applicant.

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- (a) area of land required and ultimate use;
  - (b) consistency with areawide state and regional land use plans;
  - (c) consistency with existing and projected nearby land use;
  - (d) alternative uses of the site;
  - (e) impact on population already in the area, population attracted by construction or operation of the facility itself;
  - (f) impact of availability of energy from this facility on growth patterns and population dispersal;
  - (g) geologic suitability of the site or route;
  - (h) seismologic characteristics;
  - (i) construction practices;
  - (j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;
  - (k) corridor design and construction precautions for transmission lines or aqueducts;
  - (l) scenic impacts;
  - (m) effects on natural systems, wildlife, plant life;
  - (n) impacts on important historic architectural, archeological, and cultural areas and features;
  - (o) extent of recreation opportunities and related compatible uses;
  - (p) public recreation plan for the project;
  - (q) public facilities and accommodation;
  - (r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;
  - (s) for facilities described in 75-20-104(11)(b), opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;
- (3) water resources impacts:
- (a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;
  - (b) hydrologic studies of impact

Powerlines

of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(1) monitoring programs;

(4) air quality impacts:

(a) meteorology -- wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography -- factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impacts:

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- (a) solid waste inventory;
- (b) disposal program;
- (c) relationship of disposal practices to environmental quality criteria;
- (d) capacity of disposal sites to accept projected waste loadings;
- (6) radiation impacts:
  - (a) land use controls over development and population;
  - (b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;
  - (c) analyses and studies of the adequacy of engineering safeguards and operating procedures;
  - (d) monitoring -- adequacy of devices and sampling techniques;
- (7) noise impacts:
  - (a) construction period levels;
  - (b) operational levels;
  - (c) relationship of present and projected noise levels to existing and ~~potential stricter~~ noise level standards;
  - (d) monitoring -- adequacy of devices and methods."

Section 27. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

- (1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of:
  - (i) generating 50 megawatts of electricity or more by means of nuclear fission; ;
  - (ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or
  - (iii) storing or disposing of radioactive wastes or materials from a nuclear facility.
- (b) "~~nuclear~~ Nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.
- (2) "Facility", as defined in 75-20-104(7), is further defined to

include any nuclear facility as defined in subsection (1)(a) of this section."

Section 28. Section 75-20-1205, MCA, is amended to read:

"75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of subsections (2) and (3) of 75-20-304(2), the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility."

NEW SECTION. Section 29. Effective date. This act is effective on passage and approval.

-End-

NAME: David K Kasten DATE: Feb 2

ADDRESS: Brockway Mt.

PHONE: 485-2372

REPRESENTING WHOM? PEP & Self Employed Rancher

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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NATURAL RESOURCE COMMITTEE

Sen. Nat. Res.  
2. 2. 83

I BELIEVE THAT THE MAJOR FACILITY SITING ACT SHOULD BE MADE WORKABLE. THE PROVISION REQUIRING CERTIFICATE OF NEED SHOULD NOT BE NECESSARY. A COMPANY PUTTING OUT THE LARGE AMOUNT OF CAPITAL REQUIRED TO BUILD SUCH A FACILITY SHOWS THAT THEY ARE CONVINCED THERE IS A NEED AND IT WILL BE A PROFITABLE VENTURE. IF AGRICULTURE HAD TO FURNISH A CERTIFICATE OF NEED BEFORE PLANTING OR BEFORE TURNING OUT THE BULLS, WOULDN'T WE BE IN A FINE FIX? EVEN RUSSIA WOULDN'T LIKE THAT BECAUSE THEY KNOW, FROM THEIR EXPERIENCE WITH COMPLETE REGULATION, THAT WE WOULD SOON STOP BEING A EXPORTER OF FOOD, AND MAYBE HAVE A HARD TIME FEEDING OURSELVES.

SECONDLY I THINK THAT THE PROVISION IN THE MAJOR FACILITY SITING ACT ABOUT ALTERNATIVE LOCATIONS GOES FAR BEYOND WHAT IS FEASIBLE. I UNDERSTAND THAT THE REQUIREMENTS ARE TO STUDY THREE SITES AND IT COSTS BETWEEN 5-10 MIL DOLLARS FOR EACH. I'M SURE WE ALL KNOW FROM EXPERIENCE WHO PAYS THIS. ANYONE BUILDING A MAJOR FACILITY IT IS TO THEIR ADVANTAGE TO PICK THE BEST SITE

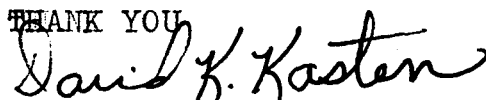
THE THIRD MAJOR THING WRONG WITH THE SITING ACT IS THE REQUIREMENT FOR ALTERNATE ENERGY STUDIES. ASKING A PERSON TO DO ALL THESE STUDIES JUST ADDS MILLIONS OF DOLLARS TO THE COST OF THE FACILITY AND OF COURSE IT IS PASSED ON TO THE END USER. OF WHAT REAL VALUE ARE THESE STUDIES IN BRINGING A NEW FACILITY ON LINE?

NOW WHEN I BEGAN I TOLD YOU I WAS A RANCHER, LET ME PUT THIS INTO TERMS THAT YOU AND I BOTH KNOW ABOUT TAX DOLLARS. THE STATE OF MONT. IS NOT IMMUNE TO THE EVER INCREASING DEMAND TO BUILD ROADS, ALSO TO REPAIR WHAT WE HAVE. OUR SCHOOLS ALWAYS NEED MORE TO STAY OPEN. THERE IS TALK OF A LARGE INCREASE IN REEVALUATING AGRICULTURAL LAND TO HELP INCREASE THE SUPPLY TO OUR COFFERS. I AM A DIRECTOR FOR OUR P.C.A. AND I CAN TELL YOU THE FARMERS AND RANCHERS CANNOT STAND MUCH MORE TAXES.

GOVERNOR SCHWINDEN, WITH HIS BUILD MONT. PROGRAM HAS SOME GOOD IDEAS, HOWEVER WE HAVE TO STOP SLEEPING WITH THESE OBSTRUCTIONISTS AND MAKE SOME OF THESE TONS OF PAPER, YOU HAVE HERE IN HELENA YOU CALL LAWS WORKABLE

I SINCERELY BELIEVE SENATE BILL 275 IS A STEP IN THE RIGHT DIRECTION. I ALONG WITH THOUSANDS OF OTHERS IN MONTANA URGE YOU TO PASS SENATE BILL 275.

THANK YOU



DAVID K. KASTEN

SR 277 BOX A-14  
BROCKWAY, MONTANA

Sen. Nat. Ho.  
2-2-83

Statement of Nick Golder, Rt. 1, Forsyth, Mt. on S.B. 275

There are a lot of people looking for work now so there is an understandable temptation to jump at anything that gives people jobs. The factors that have caused this situation <sup>are complex,</sup> but it certainly has not helped to waste money on multi-million or -billion dollar facilities that are stopped in mid-project, or mothballed after completion.

The WPPS plants in the state of Washington are a drain of billions of dollars that someone will have to dig into their pocket to pay for because of construction there that is simply not needed. It is commonly (though not officially) conceded that Unit 4 at Colstrip will be completed and put into the rate base if possible, then mothballed. ~~But ratepayers will have to pay for it anyway.~~ But ratepayers will have to pay for <sup>it</sup> ~~them~~ anyway. Other projects around the country are having similar problems. It is easy to blame the recession, but in all fairness we should also take a long look at the inflated electrical consumption growth rates that spawned these economic disasters.

Surely there are more stable and more productive things to do with scarce capital than to sink it into white elephant facilities that can't pay for themselves. Construction of such facilities gives a flash in the pan of temporary jobs, and then a long term drain on the rate base as hapless citizens spend years paying for someone else's mistakes.

SB 275 removes the requirement in the Siting Act that synfuels plants show there is a need for them. Synfuels plants are really grandiose developments. They are also very expensive white elephants when the scheme falls through as has happened on the western slope in Colorado. There are many, many horror stories in these communities: people borrowing money and gearing their businesses up for the huge influx of people; starting about one hundred bond issues for schools, etc. that will be a heavy burden when the synfuels plants collapse. These people were left with huge debts and no way to pay them.



NAME: NICK GOLDER DATE: 2-2-83

ADDRESS: Rt 1, FORSYTH, MT 59327

PHONE: 477-6684

REPRESENTING WHOM? NPRC

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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# WESTERN ANALYSIS

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# 5  
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SOME PERSPECTIVES ON  
ENVIRONMENTAL REGULATION  
IN MONTANA

Submitted to:

Montana International Trade  
Commission  
Suite 415  
Power Block Building  
Helena, Montana 59601

Submitted by:

Western Analysis, Inc.  
P.O. Box 287  
Helena, Montana 59601

March 1981

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ACKNOWLEDGEMENTS

We would like to thank the following individuals for their efforts in assisting our understanding of the issues raised in this report: Governor Ted Schwinden, Leo Berry, Gerald Mueller, Paul Schmechel, John Ross, Steve Brown, Dave Gleason, Ward Shanahan, Randy Moy, Bob Marks, Bobby Spilker, Lewis Chittum, Bob Kiesling, Ted Doney, Bill Weiland, John Bartlett, J. A. Schuchart, Mike Wilson, Fred Swanson, Mike Meloy, and Steve Perlmutter. A special recognition goes to the Montana International Trade Commission, sponsor of this project.

EXECUTIVE SUMMARY

NOT FOR  
AVAILABLE

Today there is a general consensus in Montana that sincere and reasonable efforts should be made to ensure that government regulation is effective and is discharged in a responsible and consistent manner. That will require a new sense of cooperation and common purpose between the public and private sectors.

It is intended to provide an overview of some of the major issues surrounding environmental regulations in Montana with emphasis on the Major Facility Siting Act (MFSA) and Montana Small Commercial Power Act (MSPCA). Time has not permitted an in-depth review of specific standards, but instead we have attempted to bring an objective, common-sense approach to the major policy and administrative issues. With continued cooperation among the interested parties, the following suggestions may result in a more realistic approach to regulation on the part of government, greater awareness of the permitting process on the part of industry, and mutual recognition of the common goals and aspirations shared by each.

Major Facility Siting Act

The MFSA was enacted in 1973 and initially regulated only the production of electricity and synthetic fuels. In 1975, the act was amended to include any facility (utility or non-utility) utilizing, retaining, or converting 500,000 tons of coal per year or more. The MFSA attempts to ensure that energy conversion facilities produce minimal adverse impacts on the people and environment of Montana. The law requires that the state issue a permit for environmental compatibility and public need prior to the construction of covered facilities. Although the 1979 legislature made many improvements to the act (see page 5), the following principal recommendations favor further streamlining the administrative processes and retaining the remaining ambiguities which do the benefit of both industry and government. We have clean and specific laws and regulations in order to avoid undue party obligation. The definitions for "electricity and utility" are ambiguous and do not clearly identify a "non-utility". These definitions should be clarified for facilities producing market commodities. Specifically, items listed as excluded from the "need" analysis requirements.

The applicant should be required to first file the "need" permit to apply" which would begin Phase I and only contain the applicant's data regarding "need".

It appears that the air and water quality functions of the Montana Department of Health and Environmental Sciences (DHES) will be moved to the Montana Department of Natural Resources and Conservation (DNRC). This will clarify the ambiguities regarding air and water quality in the law.

The "need" provision should not apply to facilities producing commodities which go directly into the private market system. It should apply only to facilities producing

...state power of swimming... pipeline gas to be in...  
...Montana...  
...use... must be defined on the basis of how  
...power... be used... how much power is needed...  
...sense

The state should investigate the value of conducting  
an advance area site screening process in advance of  
... applications. This process might increase the  
predictability of the review process, reduce the uncertainty  
... and reduce the review time and costs.

Montana Environmental Policy Act and  
Environmental Impact Statement Process

The MEPA was enacted by the 1971 legislature and explicitly  
modelled after the 1969 National Environmental Policy  
Act. MEPA established a state policy for the environment and  
directed state agencies to incorporate environmental values  
into their decision-making processes. An environmental impact  
statement (EIS) process was instituted to evaluate major  
actions of state government significantly affecting the  
quality of the human environment.

Federal courts have interpreted the national law as re-  
quiring that MEPA criteria be considered, along with the more  
specific criteria in the permit granting statutes, when agen-  
cies make decisions. In Montana, MEPA has been construed  
more narrowly, and is primarily procedural in practice. The  
state government and industry generally support this interpre-  
tation. The following recommendations will tend to make the  
EIS process more useful as a decision-making tool.

MEPA should require that when adverse impacts are  
identified, mitigative measures are adopted and enforced.

The state and potential applicant should communicate  
openly and early in the pre-application process to ensure that  
initial applications are complete.

A pre-EIS scoping process should be required to receive  
public input and identify major issues.

Study times under all permit granting statutes should  
be made flexible to allow for case-by-case negotiations. All  
permit granting statutes should contain explicit provisions  
regarding EIS under MEPA.

The draft and final EISs should contain all proposed  
mitigative measures and the draft EIS should contain the agency's  
"tentative" decision.

Additional Considerations

The state must ensure that its representatives and em-  
ployees carry out their functions in a spirit of cooperation  
with the private sector and objectively administer state laws  
and regulations.

The state should adopt a "grandfather clause" concept

...once adopted a compliance schedule toward meeting environmental regulations would be exempt from new and revised regulations for a specified period of time.

Governor Schwilken and the Legislature have recommended a major step toward needed consolidation of environmental management and environmental regulation programs. If the above suggestions and these alternatives should be investigated.

Although citizen participation is necessary to our democratic form of government, a consensus has emerged that the Citizen Board process could be improved. Some suggestions are to have the boards recommend only an advisory action and not to approve the boards and give them greater management decision powers to the department involved. You could have a single board composed of several agency directors with a committee from the board charged with improve administrative competence and alternative political accountability for the decision process.



NAME: Jim Mockler DATE: 3/2

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Sun. Mt.  
Dow.

ADDRESS: 2301 Colonial Dr

PHONE: 447-6223

REPRESENTING WHOM? Mt. Coal Council

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

#4  
Sen. Dist.  
Res.

NAME: Bonnie Lipsy DATE: 2-2-83

ADDRESS: 2301 Colonial Drive

PHONE: 442-6223

REPRESENTING WHOM? the Canal Canal

APPEARING ON WHICH PROPOSAL: 58 275

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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WETA

Sen. Nat. Ho.  
2-2-83

# Western Environmental Trade Association

2301 Colonial Drive - Helena, Montana 59601  
Phone (406) 443-5541

## BOARD OF DIRECTORS As of January, 1982

- Don Allen  
Montana Petroleum Association
- Robert B. Blumeyer  
Continental Oil Company
- Joe Brand  
United Transportation Union, AFL-CIO
- Bill Burlingame  
Int'l Union of Operating Engineers  
Local 400, AFL-CIO
- Glen C. Childers  
Brussel, Montana
- Riley W. Childers  
Montana Associated Utilities, Inc.
- Tad Dale  
Montana Mining Association
- John L. Delano  
Montana Railroad Association
- David M. Dennis  
Elk River Concrete Products Co.
- Bill Egan  
Int'l Brotherhood of Electrical Workers,  
Local 22, AFL-CIO
- Richard Ferderer  
Teamster Local 15
- John Fleming  
Construction and General Laborers,  
Local 1334, AFL-CIO
- Alice Fryslie  
Multi Business Service
- Jack Hughes  
IBEW, Local 44, AFL-CIO
- Jim Hughes  
Mountain Bell
- Dan Jones  
Construction and General Laborers,  
Local 1334, AFL-CIO
- Robert J. Kelly  
Champion International Corp.
- Ken Kochel  
Montana Dakota Utilities
- Hullister A. Larson  
Western Forest Industries Assn.
- C. E. (Ted) Lucas  
Highroad, Montana
- Les McGetrick  
Int'l Union of Operating Engineers  
Local 400, AFL-CIO
- Tom McMillin  
McMillin Brothers Constructors
- John E. Manley  
Dronostand, Montana
- Joseph Martin  
United Assn. of Plumbers and Pipe Fitters, AFL-CIO
- James Mochler  
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- Earl Moritz  
Lewistown, Montana
- Bill Mulick  
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- Jim Parsons  
Int'l Brotherhood of Electrical Workers,  
Local 206, AFL-CIO
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Aluminum Workers Trades Council, AFL-CIO
- Everett Shuey  
Montana Power
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Chenango Mont.
- Norman Starr  
Michelle, Montana
- Jim Williams  
Williams Construction Company
- Russ Williams  
Int'l Brotherhood of Electrical Workers, AFL-CIO

February 2, 1983

## TESTIMONY ON SB275

Mr. Chairman, Members of the Committee:

My name is Bill Egan. I am employed by the International Brotherhood of Electrical Workers, Local 222, in Great Falls and am Chairman of the Energy Committee of the Western Environmental Trade Association.

The Western Environmental Trade Association is a coalition of labor, industry, agriculture and recreation that promotes a balance between a clean environment and economic growth.

I appear here today in support of Senate Bill 275 because it epitomizes the goals of WETA, without removing any environmental safeguards from the present law. SB 275 would promote economic growth in Montana and jobs for members of my union.

The reason is that SB 275 would remove delays in the planning and construction of major facilities as well as the roadblocks that often prevent the development of coal-conversion and hydro-electric facilities.

First, the provision for need and necessity studies that exists in present law, often leads to front-end costs that preclude the construction of major facilities. These are capital outlays that, not only add considerably to the eventual cost of a project, but are required when a company has insufficient funds to invest because no production is occurring. The result is that companies may investigate a project, review the cost of the need and necessity studies, and abandon the idea because of excessive up-front costs. Thus, the potential for jobs and economic growth has been lost.

Second, alternate <sup>site</sup> studies often cause delays even if a company decides to construct a major facility in Montana. These studies are simply not necessary because a company, to maximize efficiency and minimize damage to the environment, must construct its conversion facility at the mine mouth. While these unneeded studies are being conducted, the delays postpone full-scale hirings and many young persons are forced to leave the State to seek employment elsewhere.

I know from experience because members of my union and my own family have had to leave the State to find jobs.

Another cause for delay in present law is that the company is forced to explore alternative technologies in the application of a conversion facility. A company planning to build a coal conversion or

## OFFICERS:

- Dave Johnston, President  
Int'l Union of Operating Engineers,  
Local 400, AFL-CIO
- Joe Crosswhite, President Emeritus  
Int'l Union of Operating Engineers,  
AFL-CIO, Retired
- Cecil Williams, Vice President  
Joint Council of Teamsters
- Dennis Shea, Secretary-Treasurer  
Atlanta-Richfield Co.
- EXECUTIVE DIRECTOR  
Peter V. Jackson

a major hydro-electric facility is clearly qualified to decide the most appropriate technology for the purpose of providing energy. This requirement in present law is nothing more than pure obstructionism and a method of preventing economic development and jobs.

There seems to be a notion held by some that power plants, by themselves, are bad and dirty. Members of my union work in them, and these facilities are safe, clean and environmentally compatible.

I emphasize that SB 275 takes nothing away from environmental protection. Montanans have, and should be, protective of their environment.

WETA agrees that Montana must maintain a clean and healthy environment. But part of a healthy environment is a full lunch bucket and being able to make the payments on your house and automobile.

The policies adopted during the 1970's -- that in the case of the Major Facility Siting Act, for example -- have led to delay for the sake of delay have not worked.

Montana must prepare for the 1980's and beyond and we must look to our natural resources to provide jobs and economic growth. Projects, such as coal conversion and/or hydro-power facilities, generate economic development and new wealth. Studies do not.

SB 275 will stem the tide of young people leaving the State, and provide varied employment, a more diversified economy and a more stable tax base for our local governments.

For these reasons, WETA urges that this Committee give a "do pass" recommendation to SB 275.

Thank you.

To Whom it may concern,

I am writing this letter in regards to Senate Bill #275 --to rivise the Major Facility Siting Act and make it more workable.

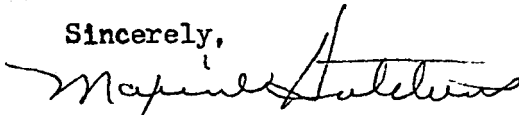
Montana is one state in the Union that should have some jobs and new tax bases, but instead we have chosen by bills introduced for special interest groups to stiffle the economy and job situation.

As each family leaves McCone County to find employment else where, it means that much less business on main street, eventually some will close, putting that much more tax burden on the rest.

I say lets revise that Facility Siting Act, to make it more workable so industries will consider Montana, and in the same breath, if they do decide on Montana, lets don't tax the hell out of them to drive them out like the Anaconda Co. Lets use a little common sense for everyone and get moving to help the economy of our whole country. It is bills like the Major Facility Siting Act that has helped to drive industry overseas in the first place causing a terrible amount of national unemployment and loss of tax revenue. I say we better <sup>be</sup> looking out for ourselves for a change. Lets keep our young people in Montana employed with a good job. One of these days there will be no young people to take over and Montana will be a state of rich retirees and no one to take <sup>Care</sup> of them, because their own kin will be too busy hunting and fishing on all those thousands of acres, or in the winter time snomobiling in Yellowstone Park or basking in the sunshine at one of their vacation condos.

Thank you for your time.

Sincerely,



Maxine Hutchens  
Circle, MT 59215

Dear Gentleman

I am in complete support of  
Senate bill 275. The Major Facility  
Siting Act needs to be streamlined.

We need new industry in Vermont,  
mainly eastern Vermont. How else  
are we ever going to put people back  
to work - How else are we going to  
broden our tax base. We need to  
cut the red tape for industry to come  
into the state. We need to lighten  
the tax load, and then impact  
studios & etc.

Sincerely yours  
Tom Cassidy - Cwick, Vt.

Circle Mont. #12  
Jan. 30, 1983 2-2-83

Legislative Committee  
Natural Resources

Sirs:

I support Senate Bill 275 to revise  
the Major Facility Siting Act.  
The Major Facility Siting Act in its  
present form is without doubt the  
most damaging legislation ever  
enacted in Montana.

Legislation under the guise of an  
environmental necessity, yet deliberately  
structured to stop all development in  
Montana. A cruel and heartless blow  
to all those who have nurtured  
a hope for a future in Montana.  
A future of jobs, homes and families  
in their home town Montana, not  
in distant states -

Sincerely  
James Hutchens  
P. O. M. A.

Circle, MT  
Jan. 31, 1983

22-83

To whom it may concern,

This letter is to state that I am infavor of Senate Bill 275, which will help to revise the Major Facility Siting Act and make it more workable for all concerned.

We need this revision to get industry rolling and get our state moving ahead with a broader tax base and employment for our youth, so they can stay and be productive residents of our state.

Thank you for your time.

Sincerely,

Adolph Kuszmaul  
Circle, MT

*Adolph Kuszmaul*  
*Pauline Kuszmaul*  
*Box 395*  
*Circle, Mt. 59215*



To: Natural Resources Committee

214  
2-2-83

I urge you to support Senate Bill 275. we must have this Siting act changed.

The way it is now, no company can come into the State of Montana and do any business. These laws are out of range. And we need these companies to help pay the taxes and jobs for our people.

So lets try and help these companies and get Montana rolling again.

Thank You  
Loraine J. Kuntz  
Circle Huby Service  
Box 75  
Circle, MT 59215

To Natural Resources Committee

I urge you to support Senate Bill  
275.

Montenans need more jobs & more business.  
but the way the Montana Facility Siting Act is  
now, it is almost impossible for new businesses  
to come in to Montana.

Thank you  
Richard Hart

Hart Const.

Box 414

Circle, Mont.

59215

2-2-83

TO: Natural Resources Committee

RE: Senate Bill NO. 275

I believe that a bill to revise the Montana Major Facility Siting Act is needed. The present act has created a major deterrent to the further development of our states natural resources, capital investment and industrial growth.

I am particularly concerned with the sections of the Act requiring a certificate of public need, alternate site and alternate energy studies. These sections of the Act deprive applicants the very basic inherent right of decision-making in a free enterprise system. Certainly any enterprise of the magnitude subject to the Act would require expensive and detailed planning and should be the business decision of the applicants.

It appears obvious to me that any applicant willing to spend the large amount of money required for a project will choose the best available site. Present permitting requirements will dictate the proper decision. Additionally, it is not appropriate that an applicant be required to provide studies for alternate energy supplies. The economics of a specific project should be part of the decision-making process of the applicant and certainly alternate energy supplies will have been a part of the process.

In summary, I urge you to consider my comments and I urge your support of Senate Bill No. 275.

Sincerely,



James C. Stegmeier  
President  
Montana Bank of Circle, N.A.

J.2-83

DALE G. PAWLOWSKI

BOX 117

CIRCLE, MT 59215

Bus. Phone 406 - 485-3447

Res. Phone 406 - 485-2336

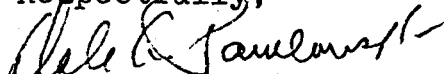
February 1, 1983

Senate Committee on Natural Resources

I respectfully request this committee's favorable consideration of Senate Bill #275 which amends the major facility siting act.

I feel that the passage of this bill would eliminate time, and money needed in the present act to complete the various studies and prepare certificates of need.

Respectfully,

  
Dale G. Pawlowski

Circle, Mt. 59215  
January 31, 1983.

To Whom it may concern:

Re S.B. 275

As a concerned tax payer who definitely believes in the development of our resources may I say I am in favor of this bill.

I would prefer that the clause stating the land be returned to its original contour be deleted and it be restored to useable contour.

Also to be deleted is the provision requiring the showing of need and necessity and the requirement for the study of alternative sites.

Requiring that studies for alternative energy supplies be done seems unnecessary.

Sincerely,  
Bertha E. Groh

I BELIEVE THAT THE MAJOR FACILITY SITING ACT SHOULD BE MADE WORKABLE. THE PROVISION REQUIRING CERTIFICATE OF NEED SHOULD NOT BE NECESSARY. A COMPANY PUTTING OUT THE LARGE AMOUNT OF CAPITAL REQUIRED TO BUILD SUCH A FACILITY SHOWS THAT THEY ARE CONVINCED THERE IS A NEED AND IT WILL BE A PROFITABLE VENTURE. IF AGRICULTURE HAD TO FURNISH A CERTIFICATE OF NEED BEFORE PLANTING OR BEFORE TURNING OUT THE BULLS, WOULDN'T WE BE IN A FINE FIX? EVEN RUSSIA WOULDN'T LIKE THAT BECAUSE THEY KNOW, FROM THEIR EXPERIENCE WITH COMPLETE REGULATION, THAT WE WOULD SOON STOP BEING AN EXPORTER OF FOOD, AND MAYBE HAVE A HARD TIME FEEDING OURSELVES.

SECONDLY I THINK THAT THE PROVISION IN THE MAJOR FACILITY SITING ACT ABOUT ALTERNATIVE LOCATIONS GOES FAR BEYOND WHAT IS FEASIBLE. I UNDERSTAND THAT THE REQUIREMENTS ARE TO STUDY THREE SITES AND IT COSTS BETWEEN 5-10 MIL DOLLARS FOR EACH. I'M SURE WE ALL KNOW FROM EXPERIENCE WHO PAYS THIS. ANYONE BUILDING A MAJOR FACILITY IT IS TO THEIR ADVANTAGE TO PICK THE BEST SITE.

THE THIRD MAJOR THING WRONG WITH THE SITING ACT IS THE REQUIREMENT FOR ALTERNATE ENERGY STUDIES. ASKING A PERSON TO DO ALL THESE STUDIES JUST ADDS MILLIONS OF DOLLARS TO THE COST OF THE FACILITY AND OF COURSE IT IS PASSED ON TO THE END USER. OF WHAT REAL VALUE ARE THESE STUDIES IN BRINGING A NEW FACILITY ON LINE?

NOW WHEN I BEGAN I TOLD YOU I WAS A RANCHER, LET ME PUT THIS INTO TERMS THAT YOU AND I BOTH KNOW ABOUT TAX DOLLARS. THE STATE OF MONT. IS NOT IMMUNE TO THE EVER INCREASING DEMAND TO BUILD ROADS, ALSO TO REPAIR WHAT WE HAVE. OUR SCHOOLS ALWAYS NEED MORE TO STAY OPEN. THERE IS TALK OF A LARGE INCREASE IN REEVALUATING AGRICULTURAL LAND TO HELP INCREASE THE SUPPLY TO OUR COFFERS. I AM A DIRECTOR FOR OUR P.C.A. AND I CAN TELL YOU THE FARMERS AND RANCHERS CANNOT STAND MUCH MORE TAXES.

GOVERNOR SCHWINDEN, WITH HIS BUILD MONT. PROGRAM HAS SOME GOOD IDEAS, HOWEVER WE HAVE TO STOP SLEEPING WITH THESE OBSTRUCTIONISTS AND MAKE SOME OF THESE TONS OF PAPER, YOU HAVE HERE IN HELENA YOU CALL LAWS WORKABLE I SINCERELY BELIEVE SENATE BILL 275 IS A STEP IN THE RIGHT DIRECTION. I ALONG WITH THOUSANDS OF OTHERS IN MONTANA URGE YOU TO PASS SENATE BILL 275.

THANK YOU

*David K. Kasten*

DAVID K. KASTEN

SR 277 BOX A-14  
BROCKWAY, MONTANA

# People For Economic Progress

Circle, Montana 59214  
February 1, 1983

To Chairman Dover and all members of the NATURAL RESOURCES COMMITTEE =====

Regarding S Bill 275 — P E P (People for Economic Progress) strongly urge you to enact S Bill 275 into law.

The present Major Facility Siting Law has proven to be costly and demanding beyond reasonable compliance. Studies and duplicate studies and further mandated studies have been an important reason that any major economic development has not happened in eastern Montana.

S.B. 275 does not detract from the environmental safe guards of the present law.

Unemployment is presently the worst bugbear of politicians, bureaucrats, businessmen and most importantly, job seekers in Montana and in the U.S. in general. According to the State Department of Labor & Industry; in December 1982, 35,600 workers were with out jobs in Montana. State wide, this is about 9.2% unemployment.

As to an ad in its local paper, the small town of Circle presently has ten houses for sale and several others for rent. There are no buyers and there are no renters simply because there are no available jobs.

According to Maxine Johnson, director of the Bureau of Business & Economic Research, at the University of Montana, "Montana is in big economic trouble". She says, "a big problem is the state's anti-business attitude and the dramatic increases in the industry tax burden".

If new energy industry to Montana were not strangled by studies, mugged by regulations and bled by excessive taxation, major facilities could be sited in "Big Sky Country".

New jobs would be created; rural taxes would be eased; most importantly, many of Montana's unemployed workers could regain the dignity and well being that employment provides. ———— Read the February issue of the National Geographic; note the wide economic improvement in Hungary, when excessive government restrictions were eased.

MR. CHAIRMAN and all others of this august committee; please allow these considerations and a full measure of common sense and justice to prevail as you legislate for passage of S.B. 275.

Respectfully yours,  
*Herbert Larson*  
Herbert Larson  
PEP sec

hs/

1-30-83

So whom it may concern;

I'm speaking to you as an unemployed Montanan. I believe Senate bill ~~215~~ needs to be streamlined for better working purposes. I believe the vote that you give on my behalf should be towards making it possible to industrialize large factories and plants by cutting through red-tape that takes so long, and costs us tax payers so many dollars.

As an unemployed worker I believe the only road to recovery is by opening jobs soon, and with your vote to rescind this bill we are

one step closer to opening factories and plants to put the Montana workers back on payroll. When this happens everyone in Montana will benefit.

Sincerely,

CK Drew  
Ovick, Wt.

22-83



1-30-81

To Whom It May Concern;

As a Montana Citizen I'm concerned with economic conditions not just in our area but states wide. I believe that your vote to rescind Senate Bill 275 will make our economy stronger.

The sooner industries and plants can be opened in Montana, without red-tape to hinder their existence the sooner Montana will be on the road to recovery.

Sincerely,  
Gene Droub,  
Circle, Mt.

To Whom it May Concern

This letter is being written in hopes that changes can be made in the Bill # 275

"Major facilities siting Act the potentials for jobs and industries is here, but because of stupid laws they are scared away & other areas quickly grab the opportunities which should be ours. Let's bring in the coal & related

projects & give our young people jobs & reasons to stay here & raise their families

Sincerely,  
Martha Horner

# 2  
San. Nat. Res.  
2-2-83

Martha + George Hance  
Eing Drew  
F. Drew  
Htha. E. Groh  
J. G. Pawlowst.  
James C. Stogmeier  
Richard Hart  
L. n. Kuntz  
Rolph Kuszmaul  
James Hutchens  
Tim Cassidy  
Maxine Hutchens

62

Sm. Nat. Res.  
2.2.83

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*Herbert Larson*  
Herbert Larson  
PEP sec

hs/

Sm. Nat. Res.  
2-2-83

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Respectfully yours,



Herbert Larson

PEP sec

hs/

Sen. Dick, Rep.  
2-2-83

Statement of Nick Golder, Rt. 1, Forsyth, Mt. on S.B. 275

There are a lot of people looking for work now so there is an understandable temptation to jump at anything that gives people jobs. The factors that have caused this situation/ <sup>are complex,</sup> but it certainly has not helped to waste money on multi-million or -billion dollar facilities that are stopped in mid-project, or mothballed after completion.

The WPPS plants in the state of Washington are a drain of billions of dollars that someone will have to dig into their pocket to pay for because of construction there that is simply not needed. It is commonly (though not officially) conceded that Unit 4 at Colstrip will be completed and put into the rate base if possible, then mothballed. ~~But ratepayers will have to pay for it anyway.~~ But ratepayers will have to pay for <sup>it</sup> ~~them~~ anyway. Other projects around the country are having similar problems. It is easy to blame the recession, but in all fairness we should also take a long look at the inflated electrical consumption growth rates that spawned these economic disasters.

Surely there are more stable and more productive things to do with scarce capital than to sink it into white elephant facilities that can't pay for themselves. Construction of such facilities gives a flash in the pan of temporary jobs, and then a long term drain on the treasury covers large areas as hapless citizens spend years paying for ~~some of the mistakes.~~

SB 275 ~~removes~~ the requirement in the Siting Act that synfuels plants show there is a need for them. Synfuels plants are really grandiose developments. They are also very expensive white elephants when the scheme falls through as has happened on the western slope in Colorado. There are many, many horror stories in these communities, people borrowing money and gearing their businesses up for the huge influx of people, stories about bond issues for schools, etc. that will never be paid. When the synfuels plants collapsed these people were left high and dry, and many in debt.

It is time to stop the government from appropriating money for the local people and the

consumers take a close look at both the need for and the viability of any proposed synfuels plant. The Major Facility Siting Act provides that the State of Montana will do that. We do not need SB 275 which would remove that necessary scrutiny and overview.

SB275 also removes the requirements to study alternate methods and sites. Shopping around to find the best possible way to produce a needed product is only using common sense. If gas from wells is available and only costs a fraction of what it would cost from a synfuels plant, the choice is obvious. Consumers already have enough financial burdens without running up the price of gas.

As an example of the advantages of objective alternate siting studies, consider Units 3 & 4 at Colstrip. If they had been built at Great Falls or Butte it would have made quite a difference in the picture there now. It would also have avoided the severe impact on the Colstrip community.

Our state and our nation are suffering under economic stress. Now is not the time to be at all careless or reckless in the way money is handled. It is axiomatic that money spent well breeds prosperity while money spent poorly breeds bankruptcy. We also need to remember that the profit motive is healthy until it infringes on the rights and property of others. At that point it becomes destructive.

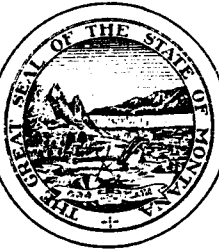
Our Facility Siting Act was born because some people in industry had clearly demonstrated that they had <sup>insufficient</sup> concern about local needs and/or impacts. The Siting Act has been a great help in bringing more careful consideration into permitting and locating new facilities. We certainly can ill afford to have SB 275 opening the door to ~~allow~~ <sup>allow</sup> unneeded and/or irresponsible development. Consumers ~~in Montana~~ <sup>in Montana</sup> are ~~being~~ <sup>being</sup> asked to pay for so many of the huge facilities, whether or not the facility is practical or needed. They certainly should have the right to have ~~some say in it.~~ Our present Siting Act gives them both input and protection that SB 275 would remove.

We don't need SB 275.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

ENERGY DIVISION

Sen. Nat. Res.  
2.2.83



TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 449-3780 ADMINISTRATOR & PLANNING AND ANALYSIS BUREAU  
(406) 449-3940 CONSERVATION & RENEWABLE ENERGY BUREAU  
(406) 449-4600 FACILITY SITING BUREAU

HELENA, MONTANA 59620

My name is Leo Berry, Director of the Department of Natural Resources and Conservation. The Department opposes Senate Bill 275.

The Department is receptive to proposals that would streamline the administration of the Major Facility Siting Act. However, this bill clearly goes beyond streamlining, to the point of substantially weakening the Siting Act. The Governor has repeatedly stated his opposition to any such proposals.

The Siting Act requires the Board of Natural Resources and Conservation to find "that the facility represents the minimum adverse impact, considering the state of available technology and the nature of economics of the various alternatives." The provisions of this bill so severely restrict the information the Board would have to make its decision that it is doubtful the Board could honestly and legally make a determination given the requirements in the Siting Act.

The following list is some of the more objectionable features of the bill.

In order to save time I will limit my remarks to these more objectionable provisions and state there are several other provisions in this bill we oppose.

The bill eliminates the alternative site study and the analysis of alternatives to the proposed facility. Eliminating these two requirements would not allow the Board of Natural Resources and Conservation to determine if the proposed facility at the proposed site represents the minimum adverse environmental impact. In the absence of information about alternative sites and technologies the Board's decision would be arbitrary and capricious and susceptible to lengthy legal challenges which could delay construction of a proposed facility.

The proposed change in the definition of utility would remove those facilities constructed in Montana to supply energy to out of state markets from a determination of need.

The deletion of the requirement that an applicant provide a statement concerning need for its proposed facility would probably prevent the Department from securing the type of information needed to make a proper evaluation. The experience in Montana and other states in regard to construction of large energy facilities is that the public wants a full accounting of need before they are willing to accept the impacts. The Department, therefore, believes that the determination of need for utility facilities as currently defined in the act is in the public interest.

The bill shortens the period between acceptance of an application and submitting its report to the Board from 22 months to 12 months. Twelve months simply does not provide enough time to conduct the Department's studies, prepare the draft EIS, conduct public hearings, respond to public comment and issue the final EIS. Such an abbreviated evaluation period would result in a decision based on inadequate information and analysis; thereby, increasing the likelihood of the Board making a decision that is not in the best interest of the State of Montana. This provision may also increase the likelihood of future legal challenges.

The bill deletes the requirement that the Department make a recommendation on a facility in its report to the Board. The recommendation is not the same as the evaluations prepared for the draft and final EIS. An evaluation covers specific topics while a recommendation synthesizes the evaluations, specifies the sensitivity of that synthesis to certain assumptions and then formulates a conclusion regarding the need for and environmental compatibility of the proposed project. This recommendation is as much a sophisticated analysis as the supporting evaluations and should be developed by the Department for the Board's consideration. It would not be appropriate to require a citizen Board



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to synthesize complex analytical evaluations. The Department also opposes the deletion of the requirement that the Board find that the facility conforms to local laws and regulations because this would put the Board in the untenable position of overriding community standards without explaining the grounds for doing so.

In general, the bill significantly weakens the Major Facility Siting Act. The bill decreases the amount of information and analysis available to the Board to make its decision; it makes the responsibilities of the Board less clear; it increases the likelihood of litigation and could ultimately result in decisions that are detrimental to Montana. I, therefore, urge this committee to give Senate Bill 275 a "do not pass" recommendation.

Ex. # 8  
Sen. Act. No.  
2283

SB 275

Testimony presented by Jim Flynn, Department of Fish, Wildlife, & Parks

February 2, 1983

Mr. Chairman, members of the Committee, my name is Jim Flynn and I appear today on behalf of the Department of Fish, Wildlife, & Parks. I appear in opposition to SB 275.

The bill proposes a number of changes in the Major Facility Siting Act. Since its enactment, the Department of Fish, Wildlife, & Parks has worked closely with the administration of the act as called for within the specifics of that law. We have felt, working with the law, that we have been able to minimize the negative impacts of numerous projects on our state's fish and wildlife resource.

Our primary concern with the proposed amendments contained in SB 275 is specifically on page 19, lines 5 through 14. This section discusses the participation of the Department of Fish, Wildlife, & Parks and other agencies in the major facility certificate process. This recognition of a relevant role of Fish, Wildlife, & Parks has been important to our Department. Primarily, it recognizes that fish, wildlife and recreation are values that the State of Montana is dedicated to preserving.

As presently written, the law allows us to include in our report opinions as to the advisability of granting, denying or modifying the certificate. In the past, we have offered our opinions and felt that we had made a positive contribution to minimizing the impact of major facilities on fish and wildlife by suggesting specific modifications. It continues to be our feeling that the investment made in detailed analyses can best produce an improved project design if those working on the analyses are allowed and encouraged to suggest reasonable modifications.

Deletion of this provision would be a lessening of our traditional role in major facility siting. We feel it would be in the best interest of preserving fish, wildlife and recreational resources if that particular part of the law remained unchanged.

NAME: DON REED DATE: 2/2/83

ADDRESS: P.O. Box 1184, Helena 59624

PHONE: 443-2520

REPRESENTING WHOM? MEIC

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENTS: (see written testimony)

H 9  
Sen. Nat. Res.  
2-2-83

SB 275

Presented to the Senate Committee on Natural Resources  
By the Montana Environmental Information Center

February 2, 1983

SB 275 is a veritable grab bag of bad amendments to the Major Facility Siting Act. When you reach into the bag, you can't tell what you might pull out. But you can rest assured that it won't be a well-conceived amendment.

Given the hodge-podge nature of SB 275, it is a little difficult to know where to start. I will confine my testimony to the three areas of deleting the study of alternatives to a proposed project, maintaining the requirement of minimum adverse environmental impact, and providing adequate information and recommendations to the Board of Natural Resources.

SB 275 removes the requirement for studies of alternative sites and technologies. This may well save applicants some dollars by saving them the cost of selecting alternatives and gathering information about those alternatives. But it could also cost consumers a bundle.

For example, a recent draft environmental impact statement for a proposed hydro-electric project at Kootenai Falls identified a difference of 41 million dollars in economic benefits to the state between the proposed project and one of the alternatives. If the cheaper alternative is eventually chosen, consumers will benefit financially from that consideration of alternatives.

Eliminating the alternative siting requirement also means that Montana won't be examining the important question of whether or not consumers would benefit from load center siting of new power plants, as opposed to siting at the minemouth. Again, the dollars in jeopardy are those of the consumers.

A second major area of concern with SB 275 is the requirement that the Board of Natural Resources find that a proposed facility "represents the minimum adverse environmental impacts" before a certificate is granted. SB 275 does not eliminate this requirement. But the bill does render the standard meaningless by eliminating the only practical means for deciding what minimum impact really is.

Presently, the Board compares the environmental impacts of reasonably available alternatives with those of the proposed project to see which has the least impact. By eliminating the study of alternative technologies and alternative sites, SB 275 makes the standard of minimum adverse environmental impact nothing more than a charade.

Finally, SB 275 severely restricts the information to be presented to the Board of Natural Resources to reach its decision. This is a

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result of provisions in the law disallowing the Department from making recommendations to the Board, disallowing other departments of state government from expressing their opinions before the Board, and by reducing the time for the Department's review from 22 months to 12 months.

Fair and reasonable resource decisions cannot be made in the dark. They require careful data gathering, analysis and interpretation. SB 275 would prevent this from happening. The Board needs all the professional expertise and advice it can get, from the Department of Natural Resources and other state agencies.

The time available to the Department to prepare its environmental impact statement and report back to the Board on a proposed project was reduced in the 1979 legislature. A 12 month limit guarantees that the data collected will not cover a full year. A full years worth of data is necessary to check for seasonal variations. Hurried analysis will move the decision making process in the wrong direction, away from well-reasoned scientific procedures and towards rushed, politically motivated decisions.



Sen. Wat. Res.  
2-2-83

## Alternative Energy Resources Organization

424 Stapleton Building, Billings, Montana 59101

(406) 259-1958

324 Fuller, Suite C-4, Helena, Mt. 59601  
443-7272

### TESTIMONY IN OPPOSITION TO SB 275

My name is Jim McNairy and I'm here representing the Alternative Energy Resources Organization, commonly known as AERO. AERO is a Montana organization with over 600 members who all share the belief that energy conservation and renewable energies are important to Montana's future.

We are firmly opposed to SB 275. Recent polls published in the Great Falls Tribune and elsewhere affirm the fact that maintaining a clean and healthy environment has overwhelming support among a large majority of Montana citizens. The Major Facility Siting Act is one of the most effective tools we have to ensure that major power and energy conversion facilities have minimal adverse effects on our environment. We feel that the Act should be protected from these massive revisions.

AERO is disturbed by a number of the bill's provisions. By deleting the requirement that major facilities must show environmental compatibility and public need, which appears on page 2, line 15, the bill's sponsors are gutting the very foundation the Act stands on.

On page 7, lines 2-9, the definition of a utility is changed to only include those entities that are publically regulated by the state or federal government. While this definition will still cover the MPC's, MDU's, and PP&L's in the state, it will not include the state's Rural Electric Cooperatives, and any potential synfuel developers, among others. Any major energy-related projects that are proposed by these latter two entities will therefore not have to prove that there is a need for the proposed facility. A demonstration of need is currently one of the public interest criterion used to approve or disapprove project applications under Section 16, Parts 3&4 of the Act (found on page 29, lines 12-25). It's conceivable that Rural Electric Coops in Montana, along with other utilities in the Northwest, could propose to build more coal-fired power plants in our state. Under the changes in this bill, the state would be unable to require that the plant's builders show that the power from the facility is needed. No one in Montana wants to see the economic disaster of the WPPSS power plants boondoggle duplicated in this state. However, we're leaving ourselves open to this possibility

by requiring that only publically regulated utilities must prove the need for their projects under the Act.

Another real weakness in the bill is found in Section 26, Part 1 (pages 40-41), where the requirement that regulated utilities must prove that their proposed facility is the best way to meet an expected energy demand is deleted. By no longer requiring applicants to conduct alternate site studies, we'll no longer be ensuring that a particular project represents a minimum adverse environmental impact, as required under the present law. This bill requires that alternate site studies will be required only for transmission line projects.

By also eliminating the need for applicants to conduct alternative technology studies, we are doing a disservice to the citizens of Montana by not ensuring that the most cost-effective and environmentally compatible technology is chosen. Under the current law, a utility that wants to build a coal-fired power plant, for instance, must prove that the coal facility represents the most economical and desirable method of meeting a defined future energy demand. SB 275 will no longer require the applicant to compare the cost of the power plant and the electricity it produces with the cost of providing equivalent amounts of energy through conservation measures or other recognized energy technologies. As ratepayers, the citizens of Montana deserve the right to continue to expect that any new power plants that are built will be the most cost-effective means of meeting future energy demand.

Current Siting Act provisions that help ensure the economic and environmental appropriateness of a proposed facility are further eroded by the language found on page 19, lines 9-12. It is here that the right of other state agencies to give the department their expert opinion concerning the advisability of a project is eliminated. This language would prohibit the Public Service Commission from recommending to the department whether or not electricity from a proposed power plant would be needed in the state or region.

One final comment. The language found on page 28, lines 18-25 is alarming. It is here that the Act is amended to instruct the board to ignore local laws in making its finding. Montanans deserve the right to expect that any developer comply with relevant local laws. Communities should have some say in whether or not they want a major facility to be built in their area. It will be a slap in the face to Montana's cities and towns for the state to tell them that only state laws, and not their local laws, are important in these cases.

For these and other reasons, AERO recommends that this blatant kamikazi attack on the Siting Act be rejected. Thank you.

For Senate Natural Resources Committee  
Senator Harold Dover, Chairman

Exp. # 11  
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I am Nell Kubesh, farm wife from Dawson County and ask that the following be read as testimony to be placed in the hearing record.

I am asking you to defeat SB 275 and leave the facility siting act as it is. It has been in effect for 10 years, and has proven to be effective in protecting the public's right to participate and in protecting agricultural lands.

According to the Billings Gazette, Colstrip 3 and 4 is just coming on line with 335 megawatts of power most of which is not needed at present, but the entire cost of units 3 and 4 will be figured into the cost structure and will result in added costs to Montana consumers, even if all the power is exported.

Since synfuel plants will not be built without subsidies, I think it is essential that synfuel plants must show a need for their product, which would be scrutinized by the state. Communities which bond themselves to furnish support services will be left with tremendous debts if such projects are started and left unfinished. The Wycoal Gas Project in Douglas, Wyoming withdrew its proposal for a synfuel plant because the projected sales price of its product would be \$17/mm/BTU as compared with current average of \$4.29 mm/BTU .

Exxon closed down the Oil Shale project in Parachute, Colorado which was well under construction, because the price tag had become prohibitive.

The Hampshire Energy project closed down its coal to gas project, stating "It is an economic decision".

And in December, the Breckenridge coal liquification project in Addison, Kentucky lost its primary sponsor because of the high cost and the potential for cost overruns.

Clearly, the private sector believes that synthetic fuels are a bad investment. The taxpayers should not subsidize an industry which the private sector itself has rejected. A certificate of need helps stop any wild schemes to use subsidies.



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The bill under question would also reduce the filing fee which is used by the state to examine the validity of the company's application, at the same time shifting the burden of proof to the Department to show why the studies and statement may not be accepted.

At the same time, the amount of time allowed for review of application, complete an impact statement and submit a report to the Board of Natural Resources is reduced by half to 12 months, which does not give scientists the time needed to assess the impacts through four seasons. A synfuels or generating plant has many facets to study.

Currently the Natural Resources Board can override local laws only if it determines they are "unreasonably restrictive". This bill does not mention local laws at all.

I believe it would be in the public's best interest to defeat this bill.

Nell Kubesh  
Bloomfield Rt.  
Glendive, mt. 59330

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Sen. Nat. Res.  
2-2-83

February 1, 1983

Senate Committee on Natural Resources

Dear Chairman Harold Dover and Members of the Committee:

My name is Irene Moffett. I am a ranch wife in Dawson County and President of the Dawson County Farmers Union Local. I request that my letter be read into the record in opposition to Senate Bill 275.

As a farmer, I am afraid that this bill would delete much of the protection for agriculture in the Major Facility Siting Act.

First, this bill would take out proving any need for the plant. Next, it would take out any choice of sites. Last, but not least, this bill would remove anything but minimum requirements for air, water and soil protection. Put this all together and it spells disaster for the agriculture interests in the area of a plant, particularly a big synfuels plant.

Sincerely,



Irene Moffett  
Fallon, Montana

NAME: Rose Magnuson DATE: 2-2-83

ADDRESS: 424 Woodworth Missoula

PHONE: 549-9754

REPRESENTING WHOM? Private Citizen

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT?                      AMEND?                      OPPOSE?   ✓  

COMMENTS: as stated object to weakening the Silt Act  
+ removing need or alternative energy because  
of economic + environmental effects  
that could be detrimental - We presently  
are following a dangerous path of tying our  
capital up in consumptive energy + wasted  
energy - we need alternatives to purchase  
'new' energy in the form of conservation  
which can be cheaper, save taxes and  
provide more jobs than our present generation  
can.

Rose Magnuson

NAME: Sandra Ekberg DATE: 2-2-83

ADDRESS: Box 2447 Great Falls, Mont 59403

PHONE: 452-6406

REPRESENTING WHOM? Montana Farmers Union

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: \_\_\_\_\_  
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2-2-83

# Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601



February 2, 1983

**WORKING TOGETHER:**

- American Baptist Churches of the Northwest
- American Lutheran Church Rocky Mountain District
- Christian Church (Disciples of Christ) in Montana
- Episcopal Church Diocese of Montana
- Lutheran Church in America Pacific Northwest Synod
- Roman Catholic Diocese of Great Falls
- Roman Catholic Diocese of Helena
- United Church of Christ Montana Conference
- United Presbyterian Church Glacier Presbytery
- United Methodist Church Yellowstone Conference
- United Presbyterian Church Yellowstone Presbytery

Chairman Dover and Members of the Senate Natural Resources Committee:

I am Cathy Campbell of Helena, speaking on behalf of the Montana Association of Churches.

The Montana Association of Churches, representing nine denominations, has adopted an Energy and Environment position paper in which we encourage the legislature to maintain and strengthen the Major Facility Siting Act.

We oppose SB 275 because it would weaken the Major Facility Siting Act.

In our position paper, we advocate enacting legislation that encourages the conversion of fossil fuels into a usable energy form near demand load centers. SB 275, by disregarding alternatives to a proposed facility, would ignore the possibility of siting new power facilities near the load center where the power would be consumed.

Economic and environmental costs and benefits of all Montana's energy resources must be seriously analyzed as they are developed. This can only be done with sufficient time and sufficient consideration of the alternatives.

We urge you not to weaken the Major Facility Siting Act.

Department of Energy  
Washington, D.C. 20585

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