

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

House BILL NO. *280*
Bradley, Miller or Meloy Vincent

INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UTILITY SITING ACT TO PROVIDE FOR PUBLIC DEBATE, TO UTILIZE THE FILING FEE TO PAY THE DEBATE COSTS, AND TO PROHIBIT CERTAIN ADVERTISING; AMENDING SECTIONS 70-803, 70-806, AND 70-807, R.C.M. 1947; AND TO PROVIDE A SEVERABILITY CLAUSE."

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

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

- (1) the word "department" means the department of natural resources and conservation.
- (2) the word "board" means the board of natural resources and conservation.
- (3) the words "utility facility" or "facility" mean:
 - (a) any energy-generating and conversion plant and associated facilities
 - (i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (iv) designed for or capable of enriching uranium minerals;
 - (b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:
 - (i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,
 - (ii) a transmission line and associated facilities

INTRODUCED BILL

1 with a design capacity of one hundred sixty-one (161)
 2 kilovolts or less and which will be constructed underground
 3 for a distance of five (5) miles or less shall not be
 4 considered a utility facility within the definitions of this
 5 act,

6 (iii) a transmission line or associated facilities of a
 7 design capacity of one hundred sixty-one (161) kilovolts or
 8 less which does not meet the requirements of subsections (i)
 9 and (ii) of this subsection shall be subject to the specific
 10 time review requirements for transmission lines in section
 11 6, subsection (1) [70-806 (1)] and section 7, subsection (1)
 12 [70-807 (1)] of this act if the proposed length of the
 13 transmission line will not exceed thirty (30) miles,

14 (iv) unless specifically covered by subsections (i),
 15 (ii) or (iii) of this subsection, the construction of all
 16 transmission lines and associated facilities shall be
 17 subject to the two (2) year time requirement of section 6,
 18 subsection (1) [70-806 (1)], and the six hundred (600) day
 19 requirement of section 7, subsection (1) [70-807 (1)],

20 (v) the provisions of subsections (i) and (ii) of
 21 this subsection shall not be construed as authorizing the
 22 simultaneous construction of two (2) or more transmission
 23 lines serving the same community or customer which would,
 24 when constructed separately, come within the exceptions of
 25 subsections (i) and (ii);

1 (c) a gas or liquid transmission line and associated
 2 facilities designed for, or capable of, transporting gas or
 3 liquid hydrocarbon products from a gasification or
 4 liquefaction facility of the size indicated in subsections
 5 (a) (ii) and (a) (iii) of this section.

6 (d) any use of geothermal resources, including the
 7 use of underground space in existence or to be created, for
 8 the creation, use or conversion of energy.

9 (4) the words "associated facilities" include, but
 10 are not limited to, transportation links of any kind,
 11 aqueducts, diversion dams and any other device or equipment
 12 associated with the production, or delivery of the energy
 13 form produced by a facility.

14 (5) the words "commence to construct" mean:

15 (a) any clearing of land, excavation, construction,
 16 or other action that would affect the environment of the
 17 site or route of a utility facility, but do not include
 18 changes needed for temporary use of sites or routes for
 19 nonutility purposes, or uses in securing geological data,
 20 including necessary borings to ascertain foundation
 21 conditions. The words do include the commencement of
 22 eminent domain proceedings under Title 93, chapter 99,
 23 R.C.M. 1947, for land or rights of way upon which a utility
 24 facility may be constructed.

25 (b) the fracturing of underground formations by any

1 means, if any such activity is related to the possible
 2 future development of an underground utility facility
 3 employing geothermal resources, but do not include the
 4 gathering of geological data by boring of test holes or
 5 other underground exploration, investigation, or
 6 experimentation.

7 (6) the word "municipality" means any county or
 8 municipality within this state.

9 (7) the word "person" includes any individual, group,
 10 firm, partnership, corporation, co-operative, association,
 11 government subdivision, government agency, local government,
 12 or other organization.

13 (8) the words "public utility" or "utility" mean any
 14 person engaged in any aspect of the production, storage,
 15 sale, delivery or furnishing of heat, electricity, gas, or
 16 energy in any form for ultimate public use.

17 (9) "certificate" means the certificate of
 18 environmental compatibility and public need issued by the
 19 board and required for the construction or operation of any
 20 facility.

21 (10) "public debates" means at least two (2)
 22 recognized nonagreeing parties to the certification hearing
 23 including the applicant company and a recognized critic
 24 group presenting their views regularly during deliberations
 25 on the application to the general public through radio,

1 television, newspaper or other medium."

2 Section 2. Section 70-806, R.C.M. 1947, is amended to
 3 read as follows:

4 "70-806. Application for certification -- filing and
 5 contents -- fees -- use of filing fees -- proof of service
 6 on municipalities -- waiver of time requirement. (1) At
 7 least two (2) years prior to anticipated commencement of
 8 construction of a utility facility as defined in sections
 9 70-803(3) (a), 70-803(3) (b) (iv), 70-803(3) (c), and
 10 70-803(3) (d) and at least nine (9) months prior to the
 11 anticipated commencement date of the construction of a
 12 utility facility as defined in section 70-803(3) (b) (iii), an
 13 applicant for a certificate shall file with the department
 14 an application, in such form as the department may
 15 prescribe, containing the following information:

16 (a) a description of the location and of the utility
 17 facility to be built thereon;

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

20 (c) a statement explaining the need for the facility;

21 (d) a description of any reasonable alternate location
 22 or locations for the proposed facility, a description of the
 23 comparative merits and detriments of each location
 24 submitted, and a statement of the reasons why the primary
 25 proposed location is best suited for the facility; and

1 (e) such other information as the applicant may
 2 consider relevant or as the department may by regulation or
 3 order require. A copy or copies of the studies referred to
 4 in clause (b) above shall be filed with the department, if
 5 ordered, and shall be available for public inspection.

6 (2) A filing fee shall be deposited in the state
 7 general fund. Said fee shall be based upon the estimated
 8 cost of the facility according to the declining scale which
 9 follows. The applicant shall pay the accumulated sums
 10 calculated as follows: three percent (3%) of any estimated
 11 cost up to one million dollars (\$1,000,000); plus one
 12 percent (1%) of any estimated cost over a million dollars
 13 and up to twenty million dollars (\$20,000,000); plus
 14 one-half of one percent (0.5%) of any estimated cost over
 15 twenty million dollars (\$20,000,000) and up to one hundred
 16 million dollars (\$100,000,000); plus one-quarter of one
 17 percent (0.25%) of any amount of estimated cost over one
 18 hundred million (\$100,000,000) and up to three hundred
 19 million dollars (\$300,000,000); plus one-tenth of one
 20 percent (0.1%) of any amount of estimated cost over three
 21 hundred million dollars (\$300,000,000). It is the intent of
 22 the legislature that the revenues derived from the filing
 23 fee be used by the department in compiling the information
 24 required for rendering a decision on a certificate,
 25 including provision for public debates, and for carrying out

1 its other responsibilities under this act.

2 (3) Each application shall be accompanied by proof of
 3 service of a copy of such application on the chief executive
 4 officer of each municipality and the head of each government
 5 agency, charged with the duty of protecting the environment
 6 or of planning land use, in the area in which any portion of
 7 such facility is to be located, both as primarily and as
 8 alternatively proposed. The copy of such application shall
 9 be accompanied by a notice specifying the date on or about
 10 which the application is to be filed.

11 (4) Each application shall also be accompanied by
 12 proof that public notice thereof was given to persons,
 13 residing in the municipalities entitled to receive notice
 14 under subsection (3) of this section, by the publication of
 15 a summary of the application, and the date on or about which
 16 it is to be filed, in such newspapers as will serve
 17 substantially to inform such persons of the application; and
 18 stipulations that public debates and post-application
 19 advertising will be carried out in accordance with board
 20 regulations and that representatives of the nonagreeing
 21 interests will present their positions, and the debate will
 22 take place in sufficient time to allow parties opportunity
 23 to participate in hearings on the application.

24 (5) Inadvertent failure of service on, or notice to,
 25 any of the municipalities, government agencies or persons

1 identified in subsections (3) and (4) of this section may be
 2 cured pursuant to orders of the department designed to
 3 afford them adequate notice to enable their effective
 4 participation in the proceeding. In addition, the
 5 department may, after filing, require the applicant to serve
 6 notice of the application or copies thereof or both upon
 7 such other persons, and file proof thereof, as the
 8 department may deem appropriate.

9 (6) An application for an amendment of a certificate
 10 shall be in such form and contain such information as the
 11 department shall prescribe. Notice of such an application
 12 shall be given as set forth in subsections (3) and (4) of
 13 this section.

14 (7) The board may waive compliance with the time limit
 15 of this section if an applicant makes a clear and convincing
 16 showing that an immediate need for a facility exists and
 17 that the applicant did not have knowledge that the need
 18 existed sufficiently in advance of the need to file an
 19 application within the time provided in subsection (1) of
 20 this section.

21 (8) The board may, in its discretion, waive the
 22 necessity of filing an application where utility facilities
 23 are being relocated pursuant to sections 32-2414 through
 24 32-2416, R.C.M. 1947, and where it is satisfied after an
 25 examination of the environmental impact statement filed

1 pursuant to chapter 65 of Title 69, R.C.M. 1947, that such
 2 relocation will not significantly affect the environment."

3 Section 3. Section 70-807, R.C.M. 1947, is amended to
 4 read as follows:

5 "70-807. Study, evaluation and report on proposed
 6 facility -- application for amendment of certificate --
 7 hearings -- prohibition against certain advertising. (1)
 8 Upon receipt of an application complying with section
 9 70-806, the department shall commence an intensive study and
 10 evaluation of the proposed facility and its effects,
 11 pursuant to section 70-816 of this act. Within six hundred
 12 (600) days following receipt of the application for a
 13 facility as defined in sections 70-803 (3) (a), 70-803 (b)
 14 (iv), 70-803 (3) (c), 70-803 (3) (d) and within one hundred
 15 eighty (180) days for a facility as defined in sections
 16 70-803 (b) (iii) the department shall make a report to the
 17 board, which shall contain the department's studies,
 18 evaluations, recommendations, other pertinent documents
 19 resulting from its study and evaluation pursuant to section
 20 70-816 of this act and the final environmental impact
 21 statement.

22 The departments of health and environmental sciences,
 23 highways, intergovernmental relations, fish and game, and
 24 public service regulation shall report to the department
 25 information relating to the impact of the proposed site on

HB 280

1 each department's area of expertise. Such information may
 2 include opinions as to the advisability of granting or
 3 denying the certificate. The department shall allocate
 4 funds obtained from filing fees to the departments making
 5 reports to reimburse them for the costs of compiling
 6 information and issuing the required report.

7 (2) On an application for an amendment of a
 8 certificate, the board shall hold a hearing in the same
 9 manner as a hearing is held on an application for a
 10 certificate if the proposed change in the facility would
 11 result in any material increase in any environmental impact
 12 of the facility or a substantial change in the location of
 13 all or a portion of such facility other than as provided in
 14 the alternates set forth in the application.

15 (3) Upon receipt of the department's report submitted
 16 under subsection (1) of this section, the board shall set a
 17 hearing date not more than sixty (60) days after such
 18 receipt.

19 (4) After submission of an application, no further
 20 advertising promoting the facility, directly or indirectly,
 21 beyond the public debates authorized in this act, shall be
 22 conducted directly or indirectly by the applicant. This
 23 prohibition shall apply to all advertising by the applicant
 24 in the press, radio, television or other media after the
 25 date of application unless the time and space of the

1 advertising, paid for completely by the applicant, is
 2 equally divided between the applicant and at least one
 3 nonagreeing party to the facility application as provided by
 4 board regulations."

5 Section 4. Section 70-820, R.C.M. 1947, is amended to
 6 read as follows:

7 "70-820. Adoption of rules -- monitoring of
 8 facilities. (1) The board and department may adopt rules
 9 implementing the provisions of this act.

10 (2) The board and the department shall have continuing
 11 authority and responsibility for monitoring the operations
 12 of all certificated facilities, for assuring continuing
 13 compliance with this act and certificates issued hereunder,
 14 and for discovering and preventing noncompliance with this
 15 act and such certificates.

16 (3) The board shall adopt rules requiring every person
 17 who proposes to gather geological data by boring of test
 18 holes or other underground exploration, investigation, or
 19 experimentation, related to the possible future development
 20 of an underground utility facility employing geothermal
 21 resources, to comply with the following requirements:

22 (a) Notify the department of the proposed action;

23 (b) Submit to the department a description of the area
 24 involved;

25 (c) Submit to the department a statement of the

1 proposed activities to be conducted and the methods to be
2 utilized;

3 (d) Submit to the department geological data reports at
4 such times as may be required by the rules; and

5 (e) Submit such other information as the board may
6 require in the rules.

7 (4) The board shall promulgate rules governing the
8 public debates and post-application advertising provided in
9 this act. These rules shall include, but not be limited to,
10 the division of time, selection of nonagreeing parties by
11 the department and extent of the debates."

12 Section 5. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from invalid
17 applications. This clause applies to this act only and does
18 not apply to chapter 327, laws of 1973.

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 280

INTRODUCED BY BRADLEY, JAMES MOORE, MELOY, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UTILITY SITING ACT TO PROVIDE FOR PUBLIC DEBATE, TO UTILIZE THE FILING FEE TO PAY THE DEBATE COSTS, AND TO PROHIBIT CERTAIN ADVERTISING; AMENDING SECTIONS 70-803, 70-806, AND 70-807, R.C.M. 1947; AND TO PROVIDE A SEVERABILITY CLAUSE."

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

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (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 two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities

1 with a design capacity of one hundred sixty-one (161)
 2 kilovolts or less and which will be constructed underground
 3 for a distance of five (5) miles or less shall not be
 4 considered a utility facility within the definitions of this
 5 act,

6 (iii) a transmission line or associated facilities of a
 7 design capacity of one hundred sixty-one (161) kilovolts or
 8 less which does not meet the requirements of subsections (i)
 9 and (ii) of this subsection shall be subject to the specific
 10 time review requirements for transmission lines in section
 11 6, subsection (1) [70-806 (1)] and section 7, subsection (1)
 12 [70-807 (1)] of this act if the proposed length of the
 13 transmission line will not exceed thirty (30) miles,

14 (iv) unless specifically covered by subsections (i),
 15 (ii) or (iii) of this subsection, the construction of all
 16 transmission lines and associated facilities shall be
 17 subject to the two (2) year time requirement of section 6,
 18 subsection (1) [70-806 (1)], and the six hundred (600) day
 19 requirement of section 7, subsection (1) [70-807 (1)],

20 (v) the provisions of subsections (i) and (ii) of
 21 this subsection shall not be construed as authorizing the
 22 simultaneous construction of two (2) or more transmission
 23 lines serving the same community or customer which would,
 24 when constructed separately, come within the exceptions of
 25 subsections (i) and (ii);

1 (c) a gas or liquid transmission line and associated
 2 facilities designed for, or capable of, transporting gas or
 3 liquid hydrocarbon products from a gasification or
 4 liquefaction facility of the size indicated in subsections
 5 (a) (ii) and (a) (iii) of this section.

6 (d) any use of geothermal resources, including the
 7 use of underground space in existence or to be created, for
 8 the creation, use or conversion of energy.

9 (4) the words "associated facilities" include, but
 10 are not limited to, transportation links of any kind,
 11 aqueducts, diversion dams and any other device or equipment
 12 associated with the production, or delivery of the energy
 13 form produced by a facility.

14 (5) the words "commence to construct" mean:

15 (a) any clearing of land, excavation, construction,
 16 or other action that would affect the environment of the
 17 site or route of a utility facility, but do not include
 18 changes needed for temporary use of sites or routes for
 19 nonutility purposes, or uses in securing geological data,
 20 including necessary borings to ascertain foundation
 21 conditions. The words do include the commencement of
 22 eminent domain proceedings under Title 93, chapter 99,
 23 R.C.M. 1947, for land or rights of way upon which a utility
 24 facility may be constructed.

25 (b) the fracturing of underground formations by any

1 means, if any such activity is related to the possible
 2 future development of an underground utility facility
 3 employing geothermal resources, but do not include the
 4 gathering of geological data by boring of test holes or
 5 other underground exploration, investigation, or
 6 experimentation.

7 (6) the word "municipality" means any county or
 8 municipality within this state.

9 (7) the word "person" includes any individual, group,
 10 firm, partnership, corporation, co-operative, association,
 11 government subdivision, government agency, local government,
 12 or other organization.

13 (8) the words "public utility" or "utility" mean any
 14 person engaged in any aspect of the production, storage,
 15 sale, delivery or furnishing of heat, electricity, gas, or
 16 energy in any form for ultimate public use.

17 (9) "certificate" means the certificate of
 18 environmental compatibility and public need issued by the
 19 board and required for the construction or operation of any
 20 facility.

21 (10) "public debates" means at least two (2)
 22 recognized nonagreeing parties to the certification hearing
 23 including the applicant company and a recognized critic
 24 group presenting their views regularly during deliberations
 25 on the application to the general public through radio,

1 television, AND newspaper or other medium."

2 Section 2. Section 70-806, R.C.M. 1947, is amended to
 3 read as follows:

4 "70-806. Application for certification -- filing and
 5 contents -- fees -- use of filing fees -- proof of service
 6 on municipalities -- waiver of time requirement. (1) At
 7 least two (2) years prior to anticipated commencement of
 8 construction of a utility facility as defined in sections
 9 70-803(3) (a), 70-803(3) (b) (iv), 70-803(3) (c), and
 10 70-803(3) (d) and at least nine (9) months prior to the
 11 anticipated commencement date of the construction of a
 12 utility facility as defined in section 70-803(3) (b) (iii), an
 13 applicant for a certificate shall file with the department
 14 an application, in such form as the department may
 15 prescribe, containing the following information:

16 (a) a description of the location and of the utility
 17 facility to be built thereon;

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

20 (c) a statement explaining the need for the facility;

21 (d) a description of any reasonable alternate location
 22 or locations for the proposed facility, a description of the
 23 comparative merits and detriments of each location
 24 submitted, and a statement of the reasons why the primary
 25 proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate, including provision for public debates, and for carrying out

its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application; and stipulations that public debates and post-application advertising will be carried out in accordance with board regulations and that representatives of the nonagreeing interests will present their positions, and the debate will take place in sufficient time to allow parties opportunity to participate in hearings on the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons

1 identified in subsections (3) and (4) of this section may be
 2 cured pursuant to orders of the department designed to
 3 afford them adequate notice to enable their effective
 4 participation in the proceeding. In addition, the
 5 department may, after filing, require the applicant to serve
 6 notice of the application or copies thereof or both upon
 7 such other persons, and file proof thereof, as the
 8 department may deem appropriate.

9 (6) An application for an amendment of a certificate
 10 shall be in such form and contain such information as the
 11 department shall prescribe. Notice of such an application
 12 shall be given as set forth in subsections (3) and (4) of
 13 this section.

14 (7) The board may waive compliance with the time limit
 15 of this section if an applicant makes a clear and convincing
 16 showing that an immediate need for a facility exists and
 17 that the applicant did not have knowledge that the need
 18 existed sufficiently in advance of the need to file an
 19 application within the time provided in subsection (1) of
 20 this section.

21 (8) The board may, in its discretion, waive the
 22 necessity of filing an application where utility facilities
 23 are being relocated pursuant to sections 32-2414 through
 24 32-2416, R.C.M. 1947, and where it is satisfied after an
 25 examination of the environmental impact statement filed

1 pursuant to chapter 65 of Title 69, R.C.M. 1947, that such
 2 relocation will not significantly affect the environment."

3 Section 3. Section 70-807, R.C.M. 1947, is amended to
 4 read as follows:

5 *70-807. Study, evaluation and report on proposed
 6 facility -- application for amendment of certificate --
 7 hearings -- prohibition against certain advertising. (1)
 8 Upon receipt of an application complying with section
 9 70-806, the department shall commence an intensive study and
 10 evaluation of the proposed facility and its effects,
 11 pursuant to section 70-816 of this act. Within six hundred
 12 (600) days following receipt of the application for a
 13 facility as defined in sections 70-803 (3) (a), 70-803 (b)
 14 (iv), 70-803 (3) (c), 70-803 (3) (d) and within one hundred
 15 eighty (180) days for a facility as defined in sections
 16 70-803 (b) (iii) the department shall make a report to the
 17 board, which shall contain the department's studies,
 18 evaluations, recommendations, other pertinent documents
 19 resulting from its study and evaluation pursuant to section
 20 70-816 of this act and the final environmental impact
 21 statement.

22 The departments of health and environmental sciences,
 23 highways, intergovernmental relations, fish and game, and
 24 public service regulation shall report to the department
 25 information relating to the impact of the proposed site on

1 each department's area of expertise. Such information may
 2 include opinions as to the advisability of granting or
 3 denying the certificate. The department shall allocate
 4 funds obtained from filing fees to the departments making
 5 reports to reimburse them for the costs of compiling
 6 information and issuing the required report.

7 (2) On an application for an amendment of a
 8 certificate, the board shall hold a hearing in the same
 9 manner as a hearing is held on an application for a
 10 certificate if the proposed change in the facility would
 11 result in any material increase in any environmental impact
 12 of the facility or a substantial change in the location of
 13 all or a portion of such facility other than as provided in
 14 the alternates set forth in the application.

15 (3) Upon receipt of the department's report submitted
 16 under subsection (1) of this section, the board shall set a
 17 hearing date not more than sixty (60) days after such
 18 receipt.

19 (4) After submission of an application, no further
 20 advertising promoting the facility, directly-or-indirectly,
 21 beyond the public debates authorized in this act, shall be
 22 conducted directly--or--indirectly by the applicant. This
 23 prohibition shall apply to all advertising by the applicant
 24 in the press, radio, AND television or-other-media DIRECTLY
 25 OR INDIRECTLY after the date of application unless the time

1 and space of the advertising, paid for completely by the
 2 applicant, is equally divided between the applicant and at
 3 least one nonagreeing party to the facility application as
 4 provided by board regulations."

5 Section 4. Section 70-820, R.C.M. 1947, is amended to
 6 read as follows:

7 "70-820. Adoption of rules -- monitoring of
 8 facilities. (1) The board and department may adopt rules
 9 implementing the provisions of this act.

10 (2) The board and the department shall have continuing
 11 authority and responsibility for monitoring the operations
 12 of all certificated facilities, for assuring continuing
 13 compliance with this act and certificates issued hereunder,
 14 and for discovering and preventing noncompliance with this
 15 act and such certificates.

16 (3) The board shall adopt rules requiring every person
 17 who proposes to gather geological data by boring or test
 18 holes or other underground exploration, investigation, or
 19 experimentation, related to the possible future development
 20 of an underground utility facility employing geothermal
 21 resources, to comply with the following requirements:

- 22 (a) Notify the department of the proposed action;
- 23 (b) Submit to the department a description of the area
- 24 involved;
- 25 (c) Submit to the department a statement of the

1 proposed activities to be conducted and the methods to be
2 utilized;

3 (d) Submit to the department geological data reports at
4 such times as may be required by the rules; and

5 (e) Submit such other information as the board may
6 require in the rules.

7 (4) The board shall promulgate rules governing the
8 public debates and post-application advertising provided in
9 this act. These rules shall include, but not be limited to,
10 the division of time, selection of nonagreeing parties by
11 the department and extent of the debates."

12 Section 5. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from invalid
17 applications. This clause applies to this act only and does
18 not apply to chapter 327, laws of 1973.

-End-

1 HOUSE BILL NO. 280

2 INTRODUCED BY BRADLEY, JAMES MOORE, MELOY, VINCENT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UTILITY
5 SITING ACT TO PROVIDE FOR PUBLIC DEBATE, TO UTILIZE THE
6 FILING FEE TO PAY THE DEBATE COSTS, AND TO PROHIBIT CERTAIN
7 ADVERTISING; AMENDING SECTIONS 70-803, 70-806, AND 70-807,
8 R.C.M. 1947; AND TO PROVIDE A SEVERABILITY CLAUSE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Section 70-803, R.C.M. 1947, is amended to
12 read as follows:13 "70-803. Definitions. The following words, when used
14 in this act, shall have the following meanings unless
15 otherwise clearly apparent from the context:16 (1) the word "department" means the department of
17 natural resources and conservation.18 (2) the word "board" means the board of natural
19 resources and conservation.

20 (3) the words "utility facility" or "facility" mean:

21 (a) any energy-generating and conversion plant and
22 associated facilities23 (i) designed for, or capable of, generating at fifty
24 (50) megawatts of electricity or more or any addition
25 thereto (except pollution control facilities approved by the1 department of health and environmental sciences added to an
2 existing plant) having an estimated cost in excess of two
3 hundred fifty thousand dollars (\$250,000), or4 (ii) designed for, or capable of, producing one
5 hundred million (100,000,000) cubic feet of gas per day or
6 more or any addition thereto having an estimated cost in
7 excess of two hundred fifty thousand dollars (\$250,000), or8 (iii) designed for, or capable of, producing fifty
9 thousand (50,000) barrels of liquid hydrocarbon products per
10 day or more or any addition thereto having an estimated cost
11 in excess of two hundred fifty thousand dollars (\$250,000),

12 or

13 (iv) designed for or capable of enriching uranium
14 minerals;15 (b) an electric transmission line and associated
16 facilities of a design capacity of thirty-four and one-half
17 (34.5) kilovolts or more, except that the following
18 transmission lines and associated facilities shall be
19 subject to certain exceptions under the act:20 (i) a transmission line and associated facilities
21 with a design capacity of sixty-nine (69) kilovolts or less
22 and which will be constructed above ground for a distance of
23 ten (10) miles or less shall not be considered a utility
24 facility within the definitions of this act,

25 (ii) a transmission line and associated facilities

1 with a design capacity of one hundred sixty-one (161)
 2 kilovolts or less and which will be constructed underground
 3 for a distance of five (5) miles or less shall not be
 4 considered a utility facility within the definitions of this
 5 act,

6 (iii) a transmission line or associated facilities of a
 7 design capacity of one hundred sixty-one (161) kilovolts or
 8 less which does not meet the requirements of subsections (i)
 9 and (ii) of this subsection shall be subject to the specific
 10 time review requirements for transmission lines in section
 11 6, subsection (1) [70-806 (1)] and section 7, subsection (1)
 12 [70-807 (1)] of this act if the proposed length of the
 13 transmission line will not exceed thirty (30) miles,

14 (iv) unless specifically covered by subsections (i),
 15 (ii) or (iii) of this subsection, the construction of all
 16 transmission lines and associated facilities shall be
 17 subject to the two (2) year time requirement of section 6,
 18 subsection (1) [70-806 (1)], and the six hundred (600) day
 19 requirement of section 7, subsection (1) [70-807 (1)],

20 (v) the provisions of subsections (i) and (ii) of
 21 this subsection shall not be construed as authorizing the
 22 simultaneous construction of two (2) or more transmission
 23 lines serving the same community or customer which would,
 24 when constructed separately, come within the exceptions of
 25 subsections (i) and (ii);

1 (c) a gas or liquid transmission line and associated
 2 facilities designed for, or capable of, transporting gas or
 3 liquid hydrocarbon products from a gasification or
 4 liquefaction facility of the size indicated in subsections
 5 (a) (ii) and (a) (iii) of this section.

6 (d) any use of geothermal resources, including the
 7 use of underground space in existence or to be created, for
 8 the creation, use or conversion of energy.

9 (4) the words "associated facilities" include, but
 10 are not limited to, transportation links of any kind,
 11 aqueducts, diversion dams and any other device or equipment
 12 associated with the production, or delivery of the energy
 13 form produced by a facility.

14 (5) the words "commence to construct" mean:

15 (a) any clearing of land, excavation, construction,
 16 or other action that would affect the environment of the
 17 site or route of a utility facility, but do not include
 18 changes needed for temporary use of sites or routes for
 19 nonutility purposes, or uses in securing geological data,
 20 including necessary borings to ascertain foundation
 21 conditions. The words do include the commencement of
 22 eminent domain proceedings under Title 93, chapter 99,
 23 R.C.M. 1947, for land or rights of way upon which a utility
 24 facility may be constructed.

25 (b) the fracturing of underground formations by any

1 means, if any such activity is related to the possible
 2 future development of an underground utility facility
 3 employing geothermal resources, but do not include the
 4 gathering of geological data by boring of test holes or
 5 other underground exploration, investigation, or
 6 experimentation.

7 (6) the word "municipality" means any county or
 8 municipality within this state.

9 (7) the word "person" includes any individual, group,
 10 firm, partnership, corporation, co-operative, association,
 11 government subdivision, government agency, local government,
 12 or other organization.

13 (8) the words "public utility" or "utility" mean any
 14 person engaged in any aspect of the production, storage,
 15 sale, delivery or furnishing of heat, electricity, gas, or
 16 energy in any form for ultimate public use.

17 (9) "certificate" means the certificate of
 18 environmental compatibility and public need issued by the
 19 board and required for the construction or operation of any
 20 facility.

21 (10) "public debates" means at least two (2)
 22 recognized nonagreeing parties to the certification hearing
 23 including the applicant company and a recognized critic
 24 group presenting their views regularly during deliberations
 25 on the application to the general public through radio,

1 televisiony AND newspaper or other medium."

2 Section 2. Section 70-806, R.C.M. 1947, is amended to
 3 read as follows:

4 "70-806. Application for certification -- filing and
 5 contents -- fees -- use of filing fees -- proof of service
 6 on municipalities -- waiver of time requirement. (1) At
 7 least two (2) years prior to anticipated commencement of
 8 construction of a utility facility as defined in sections
 9 70-803(3) (a), 70-803(3) (b) (iv), 70-803(3) (c), and
 10 70-803(3) (d) and at least nine (9) months prior to the
 11 anticipated commencement date of the construction of a
 12 utility facility as defined in section 70-803(3) (b) (iii), an
 13 applicant for a certificate shall file with the department
 14 an application, in such form as the department may
 15 prescribe, containing the following information:

16 (a) a description of the location and of the utility
 17 facility to be built thereon;

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

20 (c) a statement explaining the need for the facility;

21 (d) a description of any reasonable alternate location
 22 or locations for the proposed facility, a description of the
 23 comparative merits and detriments of each location
 24 submitted, and a statement of the reasons why the primary
 25 proposed location is best suited for the facility; and

1 (e) such other information as the applicant may
2 consider relevant or as the department may by regulation or
3 order require. A copy or copies of the studies referred to
4 in clause (b) above shall be filed with the department, if
5 ordered, and shall be available for public inspection.

6 (2) A filing fee shall be deposited in the state
7 general fund. Said fee shall be based upon the estimated
8 cost of the facility according to the declining scale which
9 follows. The applicant shall pay the accumulated sums
10 calculated as follows: three percent (3%) of any estimated
11 cost up to one million dollars (\$1,000,000); plus one
12 percent (1%) of any estimated cost over a million dollars
13 and up to twenty million dollars (\$20,000,000); plus
14 one-half of one percent (0.5%) of any estimated cost over
15 twenty million dollars (\$20,000,000) and up to one hundred
16 million dollars (\$100,000,000); plus one-quarter of one
17 percent (0.25%) of any amount of estimated cost over one
18 hundred million (\$100,000,000) and up to three hundred
19 million dollars (\$300,000,000); plus one-tenth of one
20 percent (0.1%) of any amount of estimated cost over three
21 hundred million dollars (\$300,000,000). It is the intent of
22 the legislature that the revenues derived from the filing
23 fee be used by the department in compiling the information
24 required for rendering a decision on a certificate,
25 including provision for public debates, and for carrying out

1 its other responsibilities under this act.

2 (3) Each application shall be accompanied by proof of
3 service of a copy of such application on the chief executive
4 officer of each municipality and the head of each government
5 agency, charged with the duty of protecting the environment
6 or of planning land use, in the area in which any portion of
7 such facility is to be located, both as primarily and as
8 alternatively proposed. The copy of such application shall
9 be accompanied by a notice specifying the date on or about
10 which the application is to be filed.

11 (4) Each application shall also be accompanied by
12 proof that public notice thereof was given to persons,
13 residing in the municipalities entitled to receive notice
14 under subsection (3) of this section, by the publication of
15 a summary of the application, and the date on or about which
16 it is to be filed, in such newspapers as will serve
17 substantially to inform such persons of the application; and
18 stipulations that public debates and post-application
19 advertising will be carried out in accordance with board
20 regulations and that representatives of the nonagreeing
21 interests will present their positions, and the debate will
22 take place in sufficient time to allow parties opportunity
23 to participate in hearings on the application.

24 (5) Inadvertent failure of service on, or notice to,
25 any of the municipalities, government agencies or persons

1 identified in subsections (3) and (4) of this section may be
 2 cured pursuant to orders of the department designed to
 3 afford them adequate notice to enable their effective
 4 participation in the proceeding. In addition, the
 5 department may, after filing, require the applicant to serve
 6 notice of the application or copies thereof or both upon
 7 such other persons, and file proof thereof, as the
 8 department may deem appropriate.

9 (6) An application for an amendment of a certificate
 10 shall be in such form and contain such information as the
 11 department shall prescribe. Notice of such an application
 12 shall be given as set forth in subsections (3) and (4) of
 13 this section.

14 (7) The board may waive compliance with the time limit
 15 of this section if an applicant makes a clear and convincing
 16 showing that an immediate need for a facility exists and
 17 that the applicant did not have knowledge that the need
 18 existed sufficiently in advance of the need to file an
 19 application within the time provided in subsection (1) of
 20 this section.

21 (8) The board may, in its discretion, waive the
 22 necessity of filing an application where utility facilities
 23 are being relocated pursuant to sections 32-2414 through
 24 32-2416, R.C.M. 1947, and where it is satisfied after an
 25 examination of the environmental impact statement filed

1 pursuant to chapter 65 of Title 69, R.C.M. 1947, that such
 2 relocation will not significantly affect the environment."

3 Section 3. Section 70-807, R.C.M. 1947, is amended to
 4 read as follows:

5 "70-807. Study, evaluation and report on proposed
 6 facility -- application for amendment of certificate --
 7 hearings -- prohibition against certain advertising. (1)
 8 Upon receipt of an application complying with section
 9 70-806, the department shall commence an intensive study and
 10 evaluation of the proposed facility and its effects,
 11 pursuant to section 70-816 of this act. Within six hundred
 12 (600) days following receipt of the application for a
 13 facility as defined in sections 70-803 (3) (a), 70-803 (b)
 14 (iv), 70-803 (3) (c), 70-803 (3) (d) and within one hundred
 15 eighty (180) days for a facility as defined in sections
 16 70-803 (b) (iii) the department shall make a report to the
 17 board, which shall contain the department's studies,
 18 evaluations, recommendations, other pertinent documents
 19 resulting from its study and evaluation pursuant to section
 20 70-816 of this act and the final environmental impact
 21 statement.

22 The departments of health and environmental sciences,
 23 highways, intergovernmental relations, fish and game, and
 24 public service regulation shall report to the department
 25 information relating to the impact of the proposed site on

1 each department's area of expertise. Such information may
 2 include opinions as to the advisability of granting or
 3 denying the certificate. The department shall allocate
 4 funds obtained from filing fees to the departments making
 5 reports to reimburse them for the costs of compiling
 6 information and issuing the required report.

7 (2) On an application for an amendment of a
 8 certificate, the board shall hold a hearing in the same
 9 manner as a hearing is held on an application for a
 10 certificate if the proposed change in the facility would
 11 result in any material increase in any environmental impact
 12 of the facility or a substantial change in the location of
 13 all or a portion of such facility other than as provided in
 14 the alternates set forth in the application.

15 (3) Upon receipt of the department's report submitted
 16 under subsection (1) of this section, the board shall set a
 17 hearing date not more than sixty (60) days after such
 18 receipt.

19 (4) After submission of an application, no further
 20 advertising promoting the facility, directly-or-indirectly
 21 beyond the public debates authorized in this act, shall be
 22 conducted directly--or--indirectly by the applicant. This
 23 prohibition shall apply to all advertising by the applicant
 24 in the press, radio, AND television or-other-media DIRECTLY
 25 OR INDIRECTLY after the date of application unless the time

1 and space of the advertising, paid for completely by the
 2 applicant, is equally divided between the applicant and at
 3 least one nonagreeing party to the facility application as
 4 provided by board regulations."

5 Section 4. Section 70-820, R.C.M. 1947, is amended to
 6 read as follows:

7 "70-820. Adoption of rules -- monitoring of
 8 facilities. (1) The board and department may adopt rules
 9 implementing the provisions of this act.

10 (2) The board and the department shall have continuing
 11 authority and responsibility for monitoring the operations
 12 of all certificated facilities, for assuring continuing
 13 compliance with this act and certificates issued hereunder,
 14 and for discovering and preventing noncompliance with this
 15 act and such certificates.

16 (3) The board shall adopt rules requiring every person
 17 who proposes to gather geological data by boring or test
 18 holes or other underground exploration, investigation, or
 19 experimentation, related to the possible future development
 20 of an underground utility facility employing geothermal
 21 resources, to comply with the following requirements:

22 (a) Notify the department of the proposed action;

23 (b) Submit to the department a description of the area
 24 involved;

25 (c) Submit to the department a statement of the

1 proposed activities to be conducted and the methods to be
2 utilized;

3 (d) Submit to the department geological data reports at
4 such times as may be required by the rules; and

5 (e) Submit such other information as the board may
6 require in the rules.

7 (4) The board shall promulgate rules governing the
8 public debates and post-application advertising provided in
9 this act. These rules shall include, but not be limited to,
10 the division of time, selection of nonagreeing parties by
11 the department and extent of the debates."

12 Section 5. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from invalid
17 applications. This clause applies to this act only and does
18 not apply to chapter 327, laws of 1973.

-End-

March 17, 1975

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

AMENDMENTS TO HOUSE BILL NO. 280

That House Bill No. 280, third reading, be amended as follows:

1. Amend title, line 7.
Following: "ADVERTISING"
Insert: "unless equal time is provided"
2. Amend page 10, section 3, line 7.
Following: "advertising"
Insert: "unless equal time is provided"
3. Amend page 11, section 3, line 19.
Following: "application"
Insert: "except as provided herein"
4. Amend page 11, section 3, line 22.
Following: "conducted"
Insert: "or any other person who is for or against
the application"
5. Amend page 11, section 3, line 23.
Following: "advertising"
Strike: "by the applicant"
6. Amend page 12, section 3, line 2.
Strike: "applicant"
Insert: "person contracting for the advertising, hereafter
called "advertiser" "
7. Amend page 12, section 3, line 2.
Following: "the"
Strike: "applicant"
Insert: "advertiser"
8. Amend page 12, section 3, line 4.
Following: "regulations."
Insert: "Provided, however, that if advertising regarding
the subject matter of the application has taken
place before this clause becomes effective for a
given application, persons not agreeing with the
position of the original advertiser or other per-
sons who essentially agree with the original ad-
vertiser until the persons not agreeing with the
original advertiser have spent as much money ad-
vertising as the original advertiser."

AND AS SO AMENDED, BE NOT CONCURRED IN