

1 *House* BILL NO. *511*
 2 INTRODUCED BY *Hennrich Hennrich*
 3 **VINCENT**

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 5 70-802 AND 70-803, R.C.M. 1947, TO RESTRICT THE CONSTRUCTION
 6 OF NEW UTILITIES FACILITIES TO THOSE PROVIDING ENERGY FOR
 7 THE CITIZENS OF MONTANA, AND PROVIDING AN IMMEDIATE
 8 EFFECTIVE DATE."

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

11 Section 1. Section 70-802, R.C.M. 1947, is amended to
 12 read as follows:

13 "70-802. Policy and legislative findings --
 14 prohibition. It is the constitutionally declared policy of
 15 this state to maintain and improve a clean and healthful
 16 environment for present and future generations; to protect
 17 the environmental life support system from degradation and
 18 prevent unreasonable depletion and degradation of natural
 19 resources; and to provide for administration and enforcement
 20 to attain these objectives.

21 The legislature finds that the construction of
 22 additional power and energy conversion facilities may be
 23 necessary to meet the increasing need of the citizens of
 24 Montana for electricity and other energy, and that such
 25 facilities have an effect on the environment, an impact on

1 population concentration, and an effect on the welfare of
 2 the citizens of this state. Therefore, it is necessary to
 3 ensure that the location, construction and operation of
 4 power and energy conversion facilities will produce minimal
 5 adverse effects on the environment and upon the citizens of
 6 this state by providing that no power or energy conversion
 7 facility shall hereafter be constructed or operated within
 8 this state without a certificate of environmental
 9 compatibility and Montana public need acquired pursuant to
 10 this act. The legislature further finds the construction of
 11 utility facilities as defined in this act, which export a
 12 significant proportion of their design capacity out of this
 13 state, except on an occasional or emergency basis, is held
 14 to be a violation of the constitutional mandate for the
 15 maintenance and improvement of a clean and healthful
 16 environment and the prevention of unreasonable depletion and
 17 degradation of natural resources; therefore, this type
 18 construction is prohibited."

19 Section 2. Section 70-803, R.C.M. 1947, is amended to
 20 read as follows:

21 "70-803. Definitions. The following words, when used
 22 in this act, shall have the following meanings unless
 23 otherwise clearly apparent from the context:

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

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

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

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

6 (i) designed for, or capable of, generating at fifty
7 (50) megawatts of electricity or more or any addition
8 thereto (except pollution control facilities approved by the
9 department of health and environmental sciences added to an
10 existing plant) having an estimated cost in excess of two
11 hundred fifty thousand dollars (\$250,000), or

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

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

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

23 (b) an electric transmission line and associated
24 facilities of a design capacity of thirty-four and one-half
25 (34.5) kilovolts or more, except that the following

1 transmission lines and associated facilities shall be
2 subject to certain exceptions under the act:

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

8 (ii) a transmission line and associated facilities with
9 a design capacity of one hundred sixty-one (161) kilovolts
10 or less and which will be constructed underground for a
11 distance of five (5) miles or less shall not be considered a
12 utility facility within the definitions of this act,

13 (iii) a transmission line or associated facilities of a
14 design capacity of one hundred sixty-one (161) kilovolts or
15 less which does not meet the requirements of subsections (i)
16 and (ii) of this subsection shall be subject to the specific
17 time review requirements for transmission lines in section
18 6, subsection (1) [70-806 (1)] and section 7, subsection (1)
19 [70-807 (1)] of this act if the proposed length of the
20 transmission line will not exceed thirty (30) miles,

21 (iv) unless specifically covered by subsections (i),
22 (ii) or (iii) of this subsection, the construction of all
23 transmission lines and associated facilities shall be
24 subject to the two (2) year time requirement of section 6,
25 subsection (1) [70-806 (1)], and the six hundred (600) day

1 requirement of section 7, subsection (1) [70-807 (1)],
 2 (v) the provisions of subsections (i) and (ii) of this
 3 subsection shall not be construed as authorizing the
 4 simultaneous construction of two (2) or more transmission
 5 lines serving the same community or customer which would,
 6 when constructed separately, come within the exceptions of
 7 subsections (i) and (ii);
 8 (c) a gas or liquid transmission line and associated
 9 facilities designed for, or capable of, transporting gas or
 10 liquid hydrocarbon products from a gasification or
 11 liquefaction facility of the size indicated in subsections
 12 (a) (ii) and (a) (iii) of this section.
 13 (d) any use of geothermal resources, including the use
 14 of underground space in existence or to be created, for the
 15 creation, use or conversion of energy.
 16 (4) the words "associated facilities" include, but are
 17 not limited to, transportation links of any kind, aqueducts,
 18 diversion dams and any other device or equipment associated
 19 with the production, or delivery of the energy form produced
 20 by a facility.
 21 (5) the words "commence to construct" mean:
 22 (a) any clearing of land, excavation, construction, or
 23 other action that would affect the environment of the site
 24 or route of a utility facility, but do not include changes
 25 needed for temporary use of sites or routes for nonutility

1 purposes, or uses in securing geological data, including
 2 necessary borings to ascertain foundation conditions. The
 3 words do include the commencement of eminent domain
 4 proceedings under Title 93, chapter 99, R.C.M. 1947, for
 5 land or rights of way upon which a utility facility may be
 6 constructed.
 7 (b) the fracturing of underground formations by any
 8 means, if any such activity is related to the possible
 9 future development of an underground utility facility
 10 employing geothermal resources, but do not include the
 11 gathering of geological data by boring of test holes or
 12 other underground exploration, investigation, or
 13 experimentation.
 14 (6) the word "municipality" means any county or
 15 municipality within this state.
 16 (7) the word "person" includes any individual, group,
 17 firm, partnership, corporation, co-operative, association,
 18 government subdivision, government agency, local government,
 19 or other organization.
 20 (8) the words "public utility" or "utility" mean any
 21 person engaged in any aspect of the production, storage,
 22 sale, delivery or furnishing of heat, electricity, gas, or
 23 energy in any form for ultimate public use.
 24 (9) "certificate" means the certificate of
 25 environmental compatibility and public need issued by the

1 board and required for the construction or operation of any
2 facility.

3 (10) The words "need, "public need", and "necessity"
4 refer to a requirement that Montana produced energy be used
5 primarily within the state of Montana. When the board
6 considers an application for certification in relationship
7 to these words, a utility facility fails to meet the
8 requirements if a significant proportion of the design
9 capacity of the facility is dedicated to use outside the
10 state of Montana, except on an occasional or emergency
11 basis."

12 Section 3. This act is effective on passage and
13 approval.

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