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 2 INTRODUCED BY *House* BILL NO. *581*
 3 *Kamnis Vincent* *Leen, Dinwiddie, Anderson, Harper*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS *Bradley*
 5 70-801 THROUGH 70-808, 70-810 THROUGH 70-823, R.C.M. 1947,
 6 TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
 7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

10 Section 1. Section 70-801, R.C.M. 1947, is amended to
11 read as follows:

12 "70-801. Short title. This act chapter shall be known
13 and may be cited as the Montana Utility Siting Act of
14 1973."

15 Section 2. Section 70-802, R.C.M. 1947, is amended to
16 read as follows:

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

25 The legislature finds that the construction of

1 additional power and or energy conversion facilities may be
2 necessary to meet the increasing need for electricity, and
3 other energy, and other products, and that such these
4 facilities have an effect on the environment, an impact on
5 population concentration, and an effect on the welfare of
6 the citizens of this state. Therefore, it is necessary to
7 ensure that the location, construction and operation of
8 power and energy conversion facilities will produce minimal
9 adverse effects on the environment and upon the citizens of
10 this state by providing that no a power or energy conversion
11 facility shall hereafter may not be constructed or operated
12 within this state without a certificate of environmental
13 compatibility and public need acquired pursuant to this act
14 chapter."

15 Section 3. Section 70-803, R.C.M. 1947, is amended to
16 read as follows:

17 "70-803. Definitions. ~~The following words, when used~~
18 ~~in this act, shall have the following meanings unless~~
19 ~~otherwise clearly apparent from the context~~ In this chapter,
20 unless the context requires otherwise:

21 (1) ~~the word "department"~~ "Department" means the
22 department of natural resources and conservation provided
23 for in Title 82A, chapter 15.

24 (2) ~~the word "board"~~ "Board" means the board of
25 natural resources and conservation provided for in section

1 82A-1509.

2 (3) ~~the words "utility facility" or "facility" mean~~
3 "Facility" means:

4 (a) ~~any energy-generating-and-conversion each~~ plant,
5 unit, or other facility and associated facilities, except
6 for oil and gas refineries,

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

13 (ii) designed for, or capable of, producing ~~one~~
14 ~~hundred million (100,000,000)~~ twenty-five million
15 (25,000,000) cubic feet of gas per day or more, or any
16 addition thereto having an estimated cost in excess of two
17 hundred fifty thousand dollars (\$250,000), or

18 (iii) designed for, or capable of, producing ~~fifty~~
19 ~~thousand (50,000)~~ twenty-five thousand (25,000) barrels of
20 liquid hydrocarbon products per day or more, or any addition
21 thereto having an estimated cost in excess of two hundred
22 fifty thousand dollars (\$250,000), or

23 (iv) designed for, or capable of, enriching uranium
24 minerals, or any addition thereto having an estimated cost
25 in excess of two hundred fifty thousand dollars (\$250,000),

1 or

2 (v) designed for, or capable of, utilizing, refining,
3 processing, or converting five hundred thousand (500,000)
4 tons of coal per year or more, or any addition thereto
5 having an estimated cost in excess of two hundred fifty
6 thousand dollars (\$250,000);

7 (b) an each electric transmission line and associated
8 facilities of a design capacity of ~~thirty-four-and-one-half~~
9 ~~(34.5)~~ more than sixty-nine (69) kilovolts ~~or more,~~ except
10 that ~~the following transmission lines and associated~~
11 ~~facilities shall be subject to certain exceptions under the~~
12 ~~act:~~

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

18 ~~(ii) a transmission line and associated facilities with~~
19 ~~a design capacity of one hundred sixty-one (161) kilovolts~~
20 ~~or less and which will be constructed underground for a~~
21 ~~distance of five (5) miles or less shall not be considered a~~
22 ~~utility facility within the definitions of this act,~~

23 ~~(iii) a transmission line or associated facilities of a~~
24 ~~design capacity of one hundred sixty-one (161) kilovolts or~~
25 ~~less which does not meet the requirements of subsections (i)~~

~~and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) {70-006 (1)} and section 7, subsection (1) {70-007 (1)} of this act if the proposed length of the transmission line will not exceed thirty (30) miles;~~

~~(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) {70-006 (1)}, and the six hundred (600) day requirement of section 7, subsection (1) {70-007 (1)};~~

~~(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);~~ the term does not include an electric transmission line and associated facilities of a design capacity of less than two hundred thirty (230) kilovolts and ten (10) miles or less in length;

(c) ~~a gas or liquid transmission line~~ each pipeline and associated facilities designed for, or capable of, transporting gas, water, or liquid hydrocarbon products from or to a gasification or liquefaction facility located within or without this state of the size indicated in

~~subsections (a) (ii) and (a) (iii)~~ subsection (3) (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;

(e) any underground in situ gasification of coal.

(4) ~~the words "associated~~ "Associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, substations, including distribution 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, except that the term does not include a facility.

(5) ~~the words "commence~~ "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 utility facility, but do does not include mean changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions; ~~The words do include the commencement of eminent domain proceedings under Title 93, chapter 99, R.S.M. 1947, for land or rights of way upon which a utility~~

1 ~~facility may be constructed;~~

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

9 (c) the commencement of eminent domain proceedings
10 under Title 93, chapter 99, for land or rights of way upon
11 or over which a facility may be constructed;

12 (d) the relocation or upgrading of an existing
13 facility defined by subsection (3) (b) or (c), including
14 upgrading to a design capacity covered by subsection (3)
15 (b), except that the term does not include normal
16 maintenance or repair of an existing facility.

17 (6) ~~the word "municipality"~~ "Municipality" means any
18 county or municipality within this state.

19 ~~the word "person" includes~~ "Person" means any
20 individual, group, firm, partnership, corporation,
21 cooperative, association, government subdivision, government
22 agency, local government, or other organization or entity.

23 ~~the words "public utility" or "utility" mean~~
24 "Utility" means any person engaged in any aspect of the
25 production, storage, sale, delivery or furnishing of heat,

1 electricity, gas, or energy in any form for ultimate public
2 use.

3 (9) ~~"certificate"~~ "Certificate" means the certificate
4 of environmental compatibility and public need issued by the
5 board under this chapter and that is required for the
6 construction or operation of any a facility."

7 Section 4. Section 70-804, R.C.M. 1947, is amended to
8 read as follows:

9 "70-804. Certificate from board required prior to
10 construction of ~~utility~~ facility ~~exemptions.~~ (1) ~~No A~~
11 person ~~shall~~ may not commence to construct a ~~utility~~
12 facility in the state without first ~~having-obtained~~ applying
13 for and obtaining a certificate of environmental
14 compatibility and public need issued with respect to ~~such~~
15 the facility by the board. ~~Any A~~ facility, with respect to
16 which a certificate is ~~required~~ issued, ~~shall~~ may not
17 thereafter be constructed, operated ~~and or~~ maintained
18 except in conformity with such the certificate and any
19 terms, conditions and modifications contained therein. A
20 certificate may only be issued pursuant to this ~~act~~ chapter.

21 (2) A certificate may be transferred, subject to the
22 approval of the department, to a person who agrees to comply
23 with the terms, conditions and modifications contained
24 therein.

25 (3) This ~~act-shall~~ chapter does not apply to ~~any~~

1 ~~utility~~ a facility over which an agency of the federal
2 government has exclusive jurisdiction.

3 (4) The board may adopt reasonable rules establishing
4 exemptions from this chapter for the relocation,
5 reconstruction, or upgrading of a facility that would
6 otherwise be covered by this chapter and that is unlikely to
7 have a significant environmental impact by reason of length,
8 size, location, available space or right of way, or
9 construction methods.

10 (5) A certificate is not required under this chapter
11 for a facility under diligent on site physical construction
12 or in operation on January 1, 1973."

13 Section 5. Section 70-805, R.C.M. 1947, is amended to
14 read as follows:

15 "70-805. Surcharge on electric energy producer's
16 license tax--administrative expenses--tax on gasification,
17 liquefaction, uranium enrichment facilities. (1) Every
18 "producer" as defined in chapter 16 of Title 84--the
19 ~~electrical energy producers' license tax,~~ shall, in addition
20 to the sum required to be paid by that ~~act~~ chapter, pay an
21 additional twenty-five hundredths percent (0.25%) of the
22 gross amount as shown on the statement which is required by
23 that ~~act~~ chapter, in the same manner and within the time
24 provided by that ~~act~~ chapter. The ~~state--board--of~~
25 equalization department of revenue shall report to the state

1 treasurer separately the amount transmitted to the state
2 treasurer which is added to the electrical energy producers'
3 license tax by this section ~~of this act.~~

4 (2) The legislature shall appropriate sufficient funds
5 to finance the department's activities in carrying out its
6 duties under this ~~act~~ chapter. The legislature shall provide
7 a tax on gasification, liquefaction, coal conversion, and
8 uranium enrichment facilities sufficient to produce an
9 amount of revenue equal to that derived from electrical
10 energy producers under this section."

11 Section 6. Section 70-806, R.C.M. 1947, is amended to
12 read as follows:

13 "70-806. Application for certification--filing and
14 contents--filing fees--~~use-of-filing--fees~~ notice of
15 completion of facility--further fees--proof of service on
16 municipalities--waiver-of-time-requirement amendment of
17 application or certification. (1) (a) ~~At--least-two--(2)~~
18 ~~years-prior-to-anticipated-commencement-of-construction-of-a~~
19 ~~utility-facility-as-defined-in-sections--70-803--(3)--(a),~~
20 ~~70-803--(3)--(b)--(iv),--70-803--(3)--(c),--and--70-803--(3)--(d)--and~~
21 ~~at-least--nine--(9)--months-prior--to--the--anticipated~~
22 ~~commencement--date-of-the-construction-of-a-utility-facility~~
23 ~~as-defined-in-section-70-803--(3)--(b)--(iii),--an~~ An applicant
24 for a certificate shall file with the department ~~an a~~
25 verified application, in such form as the ~~department--may~~

1 prescribe board by rule or the department by order
 2 prescribes, containing the following information:

3 ~~(a)~~ (i) a description of the location and of the
 4 utility facility to be built thereon;

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

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

9 ~~(d)~~ (iv) a description of any reasonable alternate
 10 location or locations for the proposed facility, a
 11 description of the comparative merits and detriments of each
 12 location submitted, and a statement of the reasons why the
 13 primary proposed location is best suited for the facility;
 14 and

15 ~~(e)~~ (v) such other information as the applicant ~~may~~
 16 ~~consider~~ considers relevant or as the board by rule or the
 17 department may by regulation or order require requires. A
 18 copy or copies of the studies referred to in clause ~~(b)~~ (ii)
 19 above shall be filed with the department, if ordered, and
 20 shall be available for public inspection.

21 (b) An application may consist of an application for
 22 two (2) or more facilities in combination, such as power
 23 units and transmission lines.

24 ~~(2) (a) A filing fee shall be deposited in the state~~
 25 ~~general fund. Said fee shall be~~ The applicant shall pay to

1 the department a filing fee with the application, based
 2 upon the estimated cost of the facility according to the
 3 declining scale which follows: ~~The applicant shall pay the~~
 4 ~~accumulated sums calculated as follows:~~ three percent (3%)
 5 of any estimated cost up to one million dollars
 6 (\$1,000,000); plus one percent (1%) of any estimated cost
 7 over a million dollars and up to twenty million dollars
 8 (\$20,000,000); plus one-half of one percent (0.5%) of any
 9 estimated cost over twenty million dollars (\$20,000,000);
 10 and up to one hundred million dollars (\$100,000,000); plus
 11 one-quarter of one percent (0.25%) of any amount of
 12 estimated cost over one hundred million (\$100,000,000) and
 13 up to three hundred million dollars (\$300,000,000); plus
 14 one-tenth of one percent (0.1%) of any amount of estimated
 15 cost over three hundred million dollars (\$300,000,000). It
 16 is the intent of the legislature that the revenues derived
 17 from the filing fee be used by the department in compiling
 18 the information required for rendering a decision on a
 19 certificate and for carrying out its other responsibilities
 20 under this act. If an application consists of a combination
 21 of two (2) or more facilities, the filing fee shall be the
 22 total of the fees based on the estimated cost of each
 23 facility considered separately.

24 (b) If a certificate is issued by the board for the
 25 proposed facility, immediately upon completion of

1 construction of the facility the applicant shall give a
 2 notice of completion to the department. As soon as possible
 3 after giving the notice of completion, the applicant shall
 4 file an affidavit with the department stating the actual
 5 cost of the facility in such detail as the department may
 6 require to determine whether a further fee is due. If the
 7 actual cost exceeds the estimated cost, the applicant shall
 8 file a further fee for the difference based upon the
 9 declining scale in subsection (2) (a) of this section. No
 10 further fee is required, however, if it is computed to be
 11 five hundred dollars (\$500) or less.

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

21 (4) ~~Each~~ An application shall also be accompanied by
 22 proof that public notice thereof was given to persons,
 23 residing in the municipalities entitled to receive notice
 24 under subsection (3) of this section, by the publication of
 25 a summary of the application, and the date on or about which

1 it is to be filed, in ~~such~~ those newspapers as will serve
 2 substantially to inform ~~such~~ those persons of the
 3 application.

4 (5) Inadvertent failure of service on, or notice to,
 5 any of the municipalities, government agencies or persons
 6 identified in subsections (3) and (4) of this section may be
 7 cured pursuant to orders of the department designed to
 8 afford them adequate notice to enable their effective
 9 participation in the proceeding. In addition, the department
 10 may, after filing, require the applicant to serve notice of
 11 the application or copies thereof or both upon such other
 12 persons, and file proof thereof, as the department may deem
 13 appropriate.

14 (6) An application for an amendment of an application
 15 or a certificate shall be in such form and contain such
 16 information as the ~~department shall prescribe~~ board by rule
 17 or the department by order prescribes. Notice of such an
 18 application shall be given as set forth in subsections (3)
 19 and (4) of this section. If an amendment to an original
 20 application would result in a substantial change of the
 21 original application, such an amendment shall be considered
 22 as a new application and a new filing fee shall be required.

23 ~~(7) The board may waive compliance with the time limit~~
 24 ~~of this section if an applicant makes a clear and convincing~~
 25 ~~showing that an immediate need for a facility exists and~~

1 ~~that the applicant did not have knowledge that the need~~
 2 ~~existed sufficiently in advance of the need to file an~~
 3 ~~application within the time provided in subsection (1) of~~
 4 ~~this section.~~

5 ~~(8) The board may, in its discretion, waive the~~
 6 ~~necessity of filing an application where utility facilities~~
 7 ~~are being relocated pursuant to sections 32-2414 through~~
 8 ~~32-2416, R.C.M. 1947, and where it is satisfied after an~~
 9 ~~examination of the environmental impact statement filed~~
 10 ~~pursuant to chapter 65 of Title 69, R.C.M. 1947, that such~~
 11 ~~relocation will not significantly affect the environment."~~

12 Section 7. Section 70-807, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-807. Study, evaluation and report on proposed
 15 facility--hearing on application for amendment of
 16 certificate--hearings. (1) Upon receipt of an application
 17 complying with section 70-806, the department shall commence
 18 an intensive study and evaluation of the proposed facility
 19 and its effects, ~~pursuant to section 70-816 of this act~~
 20 considering all the criteria listed in sections 70-810 and
 21 70-816. Within ~~six hundred (600) days~~ two (2) years
 22 following receipt of ~~the an~~ application for a facility as
 23 defined in ~~sections~~ subsections 70-803 (3) (a), ~~70-803 (b)~~
 24 ~~(iv), 70-803 (3) (c), and 70-803 (3) (d)~~ and for a facility
 25 as defined in subsections 70-803 (3) (b) and (c) which is

1 more than thirty (30) miles in length, and within one
 2 hundred eighty (180) days one (1) year for a facility as
 3 defined in ~~sections 70-803 (b) (iii)~~ subsections 70-803 (3)
 4 (b) and (c) which is thirty (30) miles or less in length,
 5 the department shall make a report to the board, which shall
 6 contain the department's studies, evaluations,
 7 recommendations, other pertinent documents resulting from
 8 its study and evaluation ~~pursuant to section 70-816 of this~~
 9 ~~act,~~ and the final environmental impact statement. If the
 10 application is for a facility which was not listed or
 11 proposed in a long-range plan submitted by the applicant to
 12 the department at least six (6) months before the filing of
 13 the application pursuant to section 70-814, the department
 14 shall then have three (3) years and two (2) years,
 15 respectively, to make its report to the board. If the
 16 application is for a combination of two (2) or more
 17 facilities, the department shall make its report to the
 18 board within the greater of the lengths of time provided for
 19 in this subsection for either of the facilities.

20 (2) The departments of health and environmental
 21 sciences, highways, intergovernmental relations, fish and
 22 game, and public service regulation shall report to the
 23 department information relating to the impact of the
 24 proposed site on each department's area of expertise. ~~Such~~
 25 ~~information~~ The report may include opinions as to the

1 advisability of granting, ~~or~~ denying, or modifying the
 2 certificate. The department shall allocate funds obtained
 3 from filing fees to the departments making reports to
 4 reimburse them for the costs of compiling information and
 5 issuing the required report.

6 ~~(2)~~ (3) On an application for an amendment of a
 7 certificate, the board shall hold a hearing in the same
 8 manner as a hearing is held on an application for a
 9 certificate if the proposed change in the facility would
 10 result in any material increase in any environmental impact
 11 of the facility or a substantial change in the location of
 12 all or a portion of ~~such~~ the facility other than as provided
 13 in the alternates set forth in the application.

14 ~~(3)~~ (4) Upon receipt of the department's report
 15 submitted under subsection (1) of this section, the board
 16 shall set a ~~hearing~~ date for a hearing to begin not more
 17 than sixty (60) days after ~~such~~ the receipt."

18 Section 8. Section 70-808, R.C.M. 1947, is amended to
 19 read as follows:

20 "70-808. Parties to certification proceeding--waiver
 21 by failure to participate. (1) The parties to a
 22 certification proceeding include:

23 (a) the applicant;

24 (b) each municipality and government agency entitled
 25 to receive service of a copy of the application under

1 subsection ~~(3)-of-section-6-(70-806-(3))-of-this-act~~ 70-806
 2 (3); and

3 (c) any person residing in a municipality entitled to
 4 receive service of a copy of the application under
 5 subsection ~~(4)-of-section-6-(70-806-(4))-of-this-act~~ 70-806
 6 (4); any nonprofit organization, formed in whole or in part
 7 to promote conservation or natural beauty, to protect the
 8 environment, personal health or other biological values, to
 9 preserve historical sites, to promote consumer interests, to
 10 represent commercial and industrial groups, or to promote
 11 the orderly development of the areas in which the facility
 12 is to be located; or any other interested person; and

13 (d) the department.

14 (2) Any party identified in subparagraphs (b) and (c)
 15 of subsection (1) of this section waives his right to be a
 16 party if he does not participate orally at the hearing
 17 before the board."

18 Section 9. Section 70-810, R.C.M. 1947, is amended to
 19 read as follows:

20 "70-810. Decision of board--findings necessary for
 21 certificate--conditions imposed--~~service--of--decision--on~~
 22 parties. (1) ~~The~~ Within ninety (90) days after the last day
 23 of the hearing, the board shall make complete findings,
 24 issue an opinion, and render a decision upon the record,
 25 either granting or denying the application as filed, or

1 granting it upon such terms, conditions, or modifications of
 2 the construction, operation or maintenance of the ~~utility~~
 3 facility as the board ~~may deem~~ considers appropriate. The
 4 board may not grant a certificate either as proposed by the
 5 applicant or as modified by the board unless it shall find
 6 and determine:

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

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

9 (c) that the facility represents the minimum adverse
 10 environmental impact, considering the state of available
 11 technology and the nature and economics of the various
 12 alternatives;

13 (d) each of the criteria listed in section ~~16-170-016~~
 14 ~~of this act~~ 70-816;

15 (e) in the case of an electric, gas, or liquid
 16 transmission line or aqueduct, what part, if any, of the
 17 line or aqueduct shall be located underground; that such the
 18 facility is consistent with regional plans for expansion of
 19 the appropriate grid of the utility systems serving the
 20 state and interconnected utility systems; and that such
 21 ~~facilities~~ the facility will serve the interests of utility
 22 system economy and reliability;

23 (f) that the location of the facility as proposed
 24 conforms to applicable state and local laws and regulations
 25 issued thereunder, except that the board may refuse to apply

1 any local law or regulation if it finds that, as applied to
 2 the proposed facility, such the law or regulation is
 3 unreasonably restrictive in view of the existing technology,
 4 or of factors of cost or economics, or of the needs of
 5 consumers whether located inside or outside of the directly
 6 affected government subdivisions;

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

9 (h) that duly authorized state and federal air and
 10 water quality agencies have certified that the proposed
 11 facility will not violate state and federally established
 12 standards and implementation plans; the judgments of duly
 13 authorized air and water quality agencies are conclusive on
 14 all questions related to the satisfaction of state and
 15 federal air and water quality standards.

16 (2) If the board determines that the location of all
 17 or a part of the proposed facility should be modified, it
 18 may condition its certificate upon such modification,
 19 provided that the municipalities, and persons residing
 20 therein, affected by the modification, ~~shall~~ have been given
 21 reasonable notice of the modification.

22 ~~(3) A copy of the decision and any opinion issued with~~
 23 ~~the decision shall be served upon each party. In determining~~
 24 that the facility will serve the public interest,
 25 convenience, and necessity under subsection (1) (g) of this

1 advisability of granting, or denying, or modifying the
 2 certificate. The department shall allocate funds obtained
 3 from filing fees to the departments making reports to
 4 reimburse them for the costs of compiling information and
 5 issuing the required report.

6 ~~(2)~~ (3) On an application for an amendment of a
 7 certificate, the board shall hold a hearing in the same
 8 manner as a hearing is held on an application for a
 9 certificate if the proposed change in the facility would
 10 result in any material increase in any environmental impact
 11 of the facility or a substantial change in the location of
 12 all or a portion of such the facility other than as provided
 13 in the alternates set forth in the application.

14 ~~(3)~~ (4) Upon receipt of the department's report
 15 submitted under subsection (1) of this section, the board
 16 shall set a hearing date for a hearing to begin not more
 17 than sixty (60) days after such the receipt."

18 Section 8. Section 70-808, R.C.M. 1947, is amended to
 19 read as follows:

20 "70-808. Parties to certification proceeding--waiver
 21 by failure to participate. (1) The parties to a
 22 certification proceeding include:

23 (a) the applicant;

24 (b) each municipality and government agency entitled
 25 to receive service of a copy of the application under

1 subsection ~~(3)~~-~~of-section-6-(70-806-(3))~~-~~of-this-act~~ 70-806
 2 (3); and

3 (c) any person residing in a municipality entitled to
 4 receive service of a copy of the application under
 5 subsection ~~(4)~~-~~of-section-6-(70-806-(4))~~-~~of-this-act~~ 70-806
 6 (4); any nonprofit organization, formed in whole or in part
 7 to promote conservation or natural beauty, to protect the
 8 environment, personal health or other biological values, to
 9 preserve historical sites, to promote consumer interests, to
 10 represent commercial and industrial groups, or to promote
 11 the orderly development of the areas in which the facility
 12 is to be located; or any other interested person; and

13 (d) the department.

14 (2) Any party identified in subparagraphs (b) and (c)
 15 of subsection (1) of this section waives his right to be a
 16 party if he does not participate orally at the hearing
 17 before the board."

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 19 read as follows:

20 "70-810. Decision of board--findings necessary for
 21 certificate--conditions imposed--~~service--of--decision--on~~
 22 parties. (1) The Within ninety (90) days after the last day
 23 of the hearing, the board shall make complete findings,
 24 issue an opinion, and render a decision upon the record,
 25 either granting or denying the application as filed, or

1 granting it upon such terms, conditions, or modifications of
 2 the construction, operation or maintenance of the utility
 3 facility as the board ~~may deem~~ considers appropriate. The
 4 board may not grant a certificate either as proposed by the
 5 applicant or as modified by the board unless it shall find
 6 and determine:

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

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

9 (c) that the facility represents the minimum adverse
 10 environmental impact, considering the state of available
 11 technology and the nature and economics of the various
 12 alternatives;

13 (d) each of the criteria listed in section ~~16-70-016~~
 14 ~~of this act~~ 70-816;

15 (e) in the case of an electric, gas, or liquid
 16 transmission line or aqueduct, what part, if any, of the
 17 line or aqueduct shall be located underground; that such the
 18 facility is consistent with regional plans for expansion of
 19 the appropriate grid of the utility systems serving the
 20 state and interconnected utility systems; and that such
 21 facilities the facility will serve the interests of utility
 22 system economy and reliability;

23 (f) that the location of the facility as proposed
 24 conforms to applicable state and local laws and regulations
 25 issued thereunder, except that the board may refuse to apply

1 any local law or regulation if it finds that, as applied to
 2 the proposed facility, ~~such the~~ the law or regulation is
 3 unreasonably restrictive in view of the existing technology,
 4 or of factors of cost or economics, or of the needs of
 5 consumers whether located inside or outside of the directly
 6 affected government subdivisions;

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

9 (h) that duly authorized state and federal air and
 10 water quality agencies have certified that the proposed
 11 facility will not violate state and federally established
 12 standards and implementation plans; the judgments of duly
 13 authorized air and water quality agencies are conclusive on
 14 all questions related to the satisfaction of state and
 15 federal air and water quality standards.

16 (2) If the board determines that the location of all
 17 or a part of the proposed facility should be modified, it
 18 may condition its certificate upon such modification,
 19 provided that the municipalities, and persons residing
 20 therein, affected by the modification, ~~shall~~ have been given
 21 reasonable notice of the modification.

22 (3) ~~A copy of the decision and any opinion issued with~~
 23 ~~the decision shall be served upon each party. In determining~~
 24 that the facility will serve the public interest,
 25 convenience, and necessity under subsection (1) (g) of this

1 section, the board shall consider:

2 (i) the items listed in subsections (1) (a) through
3 (b) of this section;

4 (ii) the benefits to the applicant and the state
5 resulting from the proposed facility;

6 (iii) the effects of the economic activity resulting
7 from the proposed facility;

8 (iv) the effects of the proposed facility on the
9 public health, welfare, and safety;

10 (v) any other factors that it considers relevant."

11 Section 10. Section 70-811, R.C.M. 1947, is amended to
12 read as follows:

13 "70-811. Opinion issued with decision--contents of
14 certificate--waiver of time requirements--facilities for
15 which certificate required. (1) In rendering a decision on
16 an application for a certificate, the board shall issue an
17 opinion stating its reasons for the action taken. If the
18 board has found that any regional or local law or
19 regulation, which would be otherwise applicable, is
20 unreasonably restrictive pursuant to ~~paragraph--(f)---of~~
21 ~~subsection--(i)--of--section--10--(70-810--(i)(f))--of--this--act~~
22 subsection 70-810 (1) (f), it shall state in its opinion the
23 reasons therefor.

24 (2) Any certificate issued by the board shall include
25 the following:

1 (a) An environmental evaluation statement related to
2 the ~~facilities~~ facility being certified. The statement shall
3 include, but not be limited to, analysis of the following
4 information:

5 (i) the environmental impact of the proposed facility;

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

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

10 (iv) alternatives to the proposed ~~facilities~~ facility;
11 and

12 (v) a plan for monitoring environmental effects of the
13 proposed facility.

14 (b) A statement signed by the applicant showing
15 agreement to comply with the requirements of this act
16 chapter and the conditions of the certificate.

17 (3) The time requirement of section ~~6--(70-806)~~ 70-806
18 and any of the provisions described in sections ~~7--through--11~~
19 ~~{70-807--to--70-811}~~ of this act 70-807 through 70-811 may be
20 waived by the board, for good cause shown, with respect to
21 applications filed before January 1, 1975. Applications for
22 certificates under this subsection ~~{3}~~ must be promptly
23 filed. ~~A--certificate--is--not--required--under--this--act--for~~
24 ~~facilities--under--construction--or--in--operation--on--January--1,~~
25 ~~1973. However, a certificate must be obtained for associated~~

1 ~~facilities upon which construction has not commenced before~~
 2 ~~January 17, 1973, subject to the waiver provisions of this~~
 3 ~~subsection."~~

4 Section 11. Section 70-812, R.C.M. 1947, is amended to
 5 read as follows:

6 "70-812. ~~Review of denial of certificate by~~
 7 ~~board procedure~~ Judicial review of board decision. (1) Any
 8 party as defined in section ~~8 {70-808} of this act~~ 70-808
 9 aggrieved by the final decision of the board on an
 10 application for a certificate, may obtain judicial review of
 11 that decision by the filing of a petition in a state
 12 district court of competent jurisdiction, ~~within thirty {30}~~
 13 ~~days after the issuance of such final decision. Upon receipt~~
 14 ~~of such petition, the department shall deliver to the court~~
 15 ~~a copy of the written transcript of the record of the~~
 16 ~~proceeding before it and a copy of the board's decision and~~
 17 ~~opinion entered therein which shall constitute the record on~~
 18 ~~judicial review. A copy of such transcript, decision and~~
 19 ~~opinion shall remain on file with the department and shall~~
 20 ~~be available for public inspection.~~

21 (2) ~~If a decision is issued after a hearing on an~~
 22 ~~application for a certificate, such decision is final for~~
 23 ~~purposes of judicial review.~~ The judicial review procedure
 24 shall be the same as that for contested cases under the
 25 Montana Administrative Procedure Act ~~{82-4201 to 82-4225}.~~"

1 Section 12. Section 70-813, R.C.M. 1947, is amended to
 2 read as follows:

3 "70-813. Jurisdiction of courts restricted. Except as
 4 expressly set forth in sections ~~12, 17 and 21 {70-812,~~
 5 ~~70-817 and 70-821} of this act~~ 70-812, 70-817, and 70-821,
 6 no court of this state shall have has jurisdiction to hear
 7 or determine any issue, case or controversy concerning any
 8 matter which was or could have been determined in a
 9 proceeding before the board under this ~~act~~ chapter or to
 10 stop or delay the construction, operation or maintenance of
 11 a utility facility, except to enforce compliance with this
 12 ~~act~~ chapter or the provisions of a certificate issued
 13 hereunder pursuant to sections ~~19 or 21 {70-819 or 70-821}~~
 14 ~~of this act~~ 70-819 or 70-821."

15 Section 13. Section 70-814, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-814. Annual long-range plan submitted--
 18 contents--available to public. (1) Each utility, and each
 19 person contemplating the construction of a facility within
 20 this state in the ensuing ten (10) years, shall furnish
 21 annually to the department for its review, a long-range plan
 22 for the construction and operation of utility facilities.
 23 ~~Such~~ The plan shall be submitted on April 1 of each year,
 24 ~~The plan and~~ shall include the following:

25 (a) the general location, size and type of all utility

1 facilities to be owned and operated by the utility or person
 2 whose construction is projected to commence during the
 3 ensuing ten (10) years, as well as those facilities to be
 4 removed from service during the planning period;

5 (b) a description of efforts by the utility or person
 6 to coordinate the plan with other utilities or persons so as
 7 to provide a coordinated regional plan for meeting the
 8 utility facilities needs of the region;

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

14 (d) projections of the demand for the service rendered
 15 by the utility or person and explanation of the basis for
 16 ~~such~~ those projections, and a description of the manner and
 17 extent to which the proposed facilities will meet the
 18 projected demand; and

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

23 (2) The plan shall be made available to the public by
 24 the department, and the utility or person shall ~~be required~~
 25 ~~to~~ give public notice throughout the state of its plan by

1 filing the plan with the environmental quality council, the
 2 department of health and environmental ~~science sciences~~, the
 3 department of highways, the department of public service
 4 regulation, the department of state lands and the department
 5 of intergovernmental relations. Citizen environmental
 6 protection and resource planning groups, and other
 7 interested persons may obtain a plan by written request and
 8 payment therefor to the department."

9 Section 14. Section 70-815, R.C.M. 1947, is amended to
 10 read as follows:

11 "70-815. Study of planned facilities included in
 12 annual long-range report. If a utility or person lists and
 13 identifies a proposed ~~utility~~ facility in its plan,
 14 submitted pursuant to section ~~14--{70-814}--of--this-act~~
 15 70-814, as one on which construction is proposed to be
 16 commenced within the five (5) year period ~~next-proceeding~~
 17 following submission of the plan, the department shall
 18 commence examination and evaluation of the proposed site to
 19 determine whether construction of the proposed facility
 20 would unduly impair the environmental values in section ~~16~~
 21 ~~{70-816}--of--this-act~~ 70-816. This study may be continued
 22 until such time as a utility person files an application for
 23 a certificate under section ~~6--{70-806}--of--this-act~~ 70-806.
 24 Information gathered under this section may be used to
 25 support findings and recommendations required for issuance

1 of a certificate."

2 Section 15. Section 70-816, R.C.M. 1947, is amended to
3 read as follows:

4 "70-816. Environmental factors considered in
5 evaluating long-range plans. In evaluating long-range plans,
6 conducting five-year site reviews, and evaluating
7 applications for certificates ~~of--site--and--facility~~, the
8 board and department shall give consideration to the
9 following list of environmental factors and may, by
10 regulation rule, add to the categories of this section:

11 (1) Energy needs.

12 (a) Growth in demand and projections of need.

13 (b) Availability and desirability of alternative
14 sources of energy.

15 (c) Availability and desirability of alternative
16 sources of energy in lieu of the proposed facility.

17 (d) Promotional activities of the utility which may
18 have given rise to the need for this facility.

19 (e) Socially beneficial uses of the output of this
20 facility, including its uses to protect or enhance
21 environmental quality.

22 (f) Conservation activities which could reduce the
23 need for more energy.

24 (g) Research activities of the utility of new
25 technology available to it which might minimize

1 environmental impact.

2 (2) Land use impacts.

3 (a) Area of land required and ultimate use.

4 (b) Consistency with areawide state and regional land
5 use plans.

6 (c) Consistency with existing and projected nearby
7 land use.

8 (d) Alternative uses of the site.

9 (e) Impact on population already in the area;
10 population attracted by construction or operation of the
11 facility itself; impact of availability of energy from this
12 facility on growth patterns and population dispersal.

13 (f) Geologic suitability of the site or route.

14 (g) Seismologic characteristics.

15 (h) Construction practices.

16 (i) Extent of erosion, scouring, wasting of land--both
17 at site and as a result of fossil fuel demands of the
18 facility.

19 (j) Corridor design and construction precautions for
20 transmission lines or aqueducts.

21 (k) Scenic impacts.

22 (l) Effects on natural systems, wildlife, plant life.

23 (m) Impacts on important historic architectural,
24 archeological, and cultural areas and features.

25 (n) Extent of recreation opportunities and related

1 compatible uses.

2 (o) Public recreation plan for the project.

3 (p) Public facilities and accommodation.

4 (q) Opportunities for joint use with energy intensive

5 industries, or other activities to utilize the waste heat

6 from facilities.

7 (3) Water resources impacts.

8 (a) Hydrologic studies of adequacy of water supply and

9 impact of facility on stream flow, lakes and reservoirs.

10 (b) Hydrologic studies of impact of facilities on

11 ground water.

12 (c) Cooling system evaluation including consideration

13 of alternatives.

14 (d) Inventory of effluents including physical,

15 chemical, biological, and radiological characteristics.

16 (e) Hydrologic studies of effects of effluents on

17 receiving waters, including mixing characteristics of

18 receiving waters, changed evaporation due to temperature

19 differentials, and effect of discharge on bottom sediments.

20 (f) Relationship to water quality standards.

21 (g) Effects of changes in quantity and quality on

22 water use by others, including both withdrawal and in situ

23 uses; relationship to projected uses; relationship to water

24 rights.

25 (h) Effects on plant and animal life, including algae,

1 macroinvertebrates, and fish population.

2 (i) Effects on unique or otherwise significant

3 ecosystems; e.g., wetlands.

4 (j) Monitoring programs.

5 (4) Air quality impacts.

6 (a) Meteorology. Wind direction and velocity, ambient

7 temperature ranges, precipitation values, inversion

8 occurrence, other effects on dispersion.

9 (b) Topography. Factors affecting dispersion.

10 (c) Standards in effect and projected for emissions,

11 design capability to meet standards.

12 (d) Emissions and controls.

13 (i) Stack design.

14 (ii) Particulates.

15 (iii) Sulfur Oxides.

16 (iv) Oxides of Nitrogen.

17 (v) Heavy metals, trace elements, radioactive

18 materials and other toxic substances.

19 (e) Relationship to present and projected air quality

20 of the area.

21 (f) Monitoring program.

22 (5) Solid wastes impact.

23 (a) Solid waste inventory.

24 (b) Disposal program.

25 (c) Relationship of disposal practices to

1 environmental quality criteria.

2 (d) Capacity of disposal sites to accept projected
3 waste loadings.

4 (6) Radiation impacts.

5 (a) Land use controls over development and population.

6 (b) Wastes and associated disposal program for solid,
7 liquid, radioactive and gaseous wastes.

8 (c) Analyses and studies of the adequacy of
9 engineering safeguards and operating procedures.

10 (d) Monitoring. Adequacy of devices and sampling
11 techniques.

12 (7) Noise impacts.

13 (a) Construction period levels.

14 (b) Operational levels.

15 (c) Relationship of present and projected noise levels
16 to existing and potential stricter noise standards.

17 (d) Monitoring. Adequacy of devices and methods."

18 Section 16. Section 70-817, R.C.M. 1947, is amended to
19 read as follows:

20 "70-817. Additional requirements by other governmental
21 agencies not permitted after issuance of certificate--
22 exceptions. Notwithstanding any other ~~provision~~ of law, no
23 state or regional agency, or municipality or other local
24 government, may require any approval, consent, permit,
25 certificate, or other condition for the construction,

1 operation, or maintenance of a ~~utility~~ facility authorized
2 by a certificate issued pursuant to ~~the provisions~~ of this
3 ~~act chapter~~; except that the state air and water quality
4 agency or agencies shall retain authority which they have or
5 may be granted to determine compliance of the proposed
6 facility with state and federal standards and implementation
7 plans for air and water quality and to enforce those
8 standards. ~~Nothing in this act shall~~ This chapter does not
9 prevent the application of state laws for the protection of
10 employees engaged in the construction, operation or
11 maintenance of such a facility."

12 Section 17. Section 70-818, R.C.M. 1947, is amended to
13 read as follows:

14 "70-818. Revocation or suspension of certificate--
15 voiding of application. (1) A certificate may be revoked
16 or suspended by the board:

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

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

23 (3) (c) for violation of ~~the provisions~~ any provision
24 of this ~~act chapter~~, the regulations rules issued
25 thereunder, or orders of the board or department.

1 (2) An application may be voided by the department:

2 (a) for any material false statement in the
3 application or in accompanying statements or studies
4 required of the applicant;

5 (b) for failure to file an application in
6 substantially the form and content required by this chapter
7 and the rules adopted thereunder; or

8 (c) for failure to deposit the filing fee with the
9 application as required by section 70-806."

10 Section 18. Section 70-819, R.C.M. 1947, is amended to
11 read as follows:

12 "70-819. Enforcement of act chapter by residents of
13 state--statement of failure to enforce act--mandamus
14 --private suits for damages. (1) A resident of this state,
15 with knowledge that a requirement of this act chapter or a
16 rule adopted under this act, under it is not being enforced
17 by a public officer or employee whose duty it is to enforce
18 the requirement or rule, may bring the failure to enforce to
19 the attention of the public officer or employee by a written
20 statement under oath that shall state the specific facts of
21 the failure to enforce the requirement or rule. Knowingly
22 making false statements or charges in the affidavit subjects
23 the affiant to penalties prescribed under the law of
24 perjury.

25 (2) If the public officer or employee neglects or

1 refuses for an unreasonable time after receipt of the
2 statement to enforce the requirement or rule, the resident
3 may bring an action of mandamus in the district court of the
4 first judicial district of this state, in and for the county
5 of Lewis and Clark. If the court finds that a requirement of
6 this act chapter or a rule adopted under this act under it
7 is not being enforced, the court may order the public
8 officer or employee, whose duty it is to enforce the
9 requirement or rule, to perform his duties. If he fails to
10 do so, the public officer or employee shall be held in
11 contempt of court and is subject to the penalties provided
12 by law.

13 (3) An owner of an interest in real property who
14 obtains all or part of his supply of water for domestic,
15 agricultural, industrial, or other legitimate use from a
16 surface or underground source may sue a utility person to
17 recover damages for contamination, diminution, or
18 interruption of the water supply, proximately resulting from
19 the operation of a utility facility. The remedies
20 enumerated in this subsection do not exclude the use of any
21 other remedy which may be available under the laws of the
22 state."

23 Section 19. Section 70-820, R.C.M. 1947, is amended to
24 read as follows:

25 "70-820. Adoption of rules--monitoring of facilities.

1 (1) The board ~~and department~~ may adopt rules implementing
2 the provisions of this ~~act~~ chapter, including, but not
3 limited to, rules:

- 4 (a) governing the form and content of applications;
5 (b) further defining the terms used in this chapter;
6 (c) governing the form and content of long-range
7 plans;
8 (d) designed to reduce the rate of growth of energy
9 demands by limiting promotional activities by energy
10 suppliers;
11 (e) any other rules the board considers necessary to
12 accomplish the purposes and objectives of this chapter.

13 (2) The board and the department shall ~~have continuing~~
14 ~~authority--and--responsibility--for--monitoring~~ monitor the
15 operations of all certificated facilities, for assuring
16 continuing compliance with this ~~act~~ chapter and certificates
17 issued hereunder, and for discovering and preventing
18 noncompliance with this ~~act~~ chapter and ~~such the~~
19 certificates.

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

- 1 (a) Notify the department of the proposed action;
2 (b) Submit to the department a description of the area
3 involved;
4 (c) Submit to the department a statement of the
5 proposed activities to be conducted and the methods to be
6 utilized;
7 (d) Submit to the department geological data reports
8 at such times as may be required by the rules; and
9 (e) Submit such other information as the board may
10 require in the rules."
11 Section 20. Section 70-821, R.C.M. 1947, is amended to
12 read as follows:
13 "70-821. Penalties for violation of ~~act chapter~~--civil
14 action by attorney general. (1) Whoever
15 (a) without first obtaining a certificate ~~of-site-and~~
16 ~~facility~~ required under section ~~4-[70-804]~~ 70-804, commences
17 to construct or operate a ~~utility~~ facility ~~after--the~~
18 ~~effective-date-of-this-act~~; or
19 (b) having first obtained a certificate ~~of-site-and~~
20 ~~facility~~, constructs, operates or maintains a ~~utility~~
21 facility other than in compliance with the certificate; or
22 (c) violates any other provision of this chapter or
23 any rule or order adopted thereunder, or submits false
24 information in any report or application required by this
25 chapter or rule or order adopted thereunder; or

1 ~~(c)~~ (d) causes any of the aforementioned acts to
 2 occur; shall be liable to a civil penalty of not more than
 3 ten thousand dollars (\$10,000) for each violation. Each day
 4 of a continuing violation shall constitute a separate
 5 offense. The penalty shall be recoverable in a civil suit
 6 brought by the attorney general on behalf of the state in
 7 the first district court of Montana.

8 (2) Whoever knowingly and willfully violates
 9 subsection (1) shall be fined not more than ten thousand
 10 dollars (\$10,000) for each violation or imprisoned for not
 11 more than one (1) year, or both. Each day of a continuing
 12 violation shall constitute a separate offense.

13 (3) In addition to any penalty provided in subsections
 14 (1) or (2), whenever the department determines that a person
 15 is violating or is about to violate any of the provisions of
 16 this section, it ~~shall~~ may refer the matter to the attorney
 17 general who may bring a civil action on behalf of the state
 18 in the first district court of Montana for injunctive or
 19 other appropriate relief against the violation and to
 20 enforce ~~the--act~~ this chapter or a certificate issued
 21 hereunder, and upon a proper showing a permanent or
 22 preliminary injunction or temporary restraining order shall
 23 be granted without bond. The department shall also enforce
 24 this chapter and bring legal actions to accomplish the
 25 enforcement through its own legal counsel.

1 (4) All fines collected shall be deposited in the
 2 state general fund."

3 Section 21. Section 70-822, R.C.M. 1947, is amended to
 4 read as follows:

5 "70-822. Grants, gifts and funds. The department ~~shall~~
 6 ~~have authority to~~ may receive grants, gifts and other funds
 7 from any public or private source, to assist in its
 8 activities under this ~~act~~ chapter."

9 Section 22. Section 70-823, R.C.M. 1947, is amended to
 10 read as follows:

11 "70-823. ~~Act~~ Chapter supersedes other laws or
 12 regulations. This ~~act~~ chapter supersedes other laws or
 13 regulations. If any provision of this ~~act~~ chapter is in
 14 conflict with any other law of this state, or any rule or
 15 regulation promulgated thereunder, this ~~act~~ chapter shall
 16 govern and control, and ~~such~~ the other law, rule or
 17 regulation shall be deemed superseded for the purpose of
 18 this ~~act~~ chapter."

19 Section 23. Amendments not indicative of legislative
 20 interpretation of 1973 act--savings clause. The amendments
 21 made by this act, or proposed to be made if this act should
 22 not be enacted, do not indicate an expression of legislative
 23 intent as to the interpretation of any provision of the
 24 Montana Utility Siting Act of 1973 as it existed prior to
 25 the introduction or enactment of this act. This act shall

1 not affect the outcome of any judicial or quasi-judicial
2 administrative proceeding commenced prior to the effective
3 date of this act.

4 Section 24. Applicability. The amendments made by
5 this act apply only to applications received by the
6 department after January 1, 1975.

7 Section 25. This act is effective on its passage and
8 approval.

-End-

Approved by Committee
on Natural Resources

1 HOUSE BILL NO. 581
2 INTRODUCED BY BARDANOUE, MELOY, HUENNEKENS, KEMMIS, VINCENT,
3 LIEN, DRISCOLL, GUNDERSON, HARPER, BRADLEY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
6 70-801 THROUGH ~~70-808, 70-810 THROUGH~~ 70-823, R.C.M. 1947,
7 TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 Section 1. Section 70-801, R.C.M. 1947, is amended to
12 read as follows:

13 "70-801. Short title. This ~~act~~ chapter shall be known
14 and may be cited as the Montana ~~Utility~~ MAJOR FACILITY
15 Siting Act of 1973."

16 Section 2. Section 70-802, R.C.M. 1947, is amended to
17 read as follows:

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

1 The legislature finds that the construction of
2 additional power ~~and~~ or energy conversion facilities may be
3 necessary to meet the increasing need for electricity, ~~and~~
4 ~~other~~ energy, and other products, and that ~~such~~ these
5 facilities have an effect on the environment, an impact on
6 population concentration, and an effect on the welfare of
7 the citizens of this state. Therefore, it is necessary to
8 ensure that the location, construction and operation of
9 power and energy conversion facilities will produce minimal
10 adverse effects on the environment and upon the citizens of
11 this state by providing that ~~no~~ a power or energy conversion
12 facility ~~shall hereafter~~ may not be constructed or operated
13 within this state without a certificate of environmental
14 compatibility and public need acquired pursuant to this ~~act~~
15 chapter."

16 Section 3. Section 70-803, R.C.M. 1947, is amended to
17 read as follows:

18 "70-803. Definitions. ~~The following words, when used~~
19 ~~in this act, shall have the following meanings unless~~
20 ~~otherwise clearly apparent from the context~~ In this chapter,
21 unless the context requires otherwise:

22 (1) ~~the word "department"~~ "Department" means the
23 department of natural resources and conservation provided
24 for in Title 82A, Chapter 15.

25 (2) ~~the word "board"~~ "Board" means the board of

1 natural resources and conservation provided for in section
 2 82A-1509.

3 (3) ~~the words "utility facility" or "facility" mean~~
 4 "Facility" means:

5 (a) ~~any energy generating and conversion each plant,~~
 6 unit, or other facility and associated facilities, except
 7 for oil and gas refineries.

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

14 (ii) designed for, or capable of, producing ~~one~~
 15 ~~hundred million (100,000,000)~~ twenty-five million
 16 (25,000,000) cubic feet of gas per day or more, or any
 17 addition thereto having an estimated cost in excess of two
 18 hundred fifty thousand dollars (\$250,000), or

19 (iii) designed for, or capable of, producing ~~fifty~~
 20 ~~thousand (50,000)~~ twenty-five thousand (25,000) barrels of
 21 liquid hydrocarbon products per day or more, or any addition
 22 thereto having an estimated cost in excess of two hundred
 23 fifty thousand dollars (\$250,000), or

24 (iv) designed for, or capable of, enriching uranium
 25 minerals, or any addition thereto having an estimated cost

1 in excess of two hundred fifty thousand dollars (\$250,000),
 2 or

3 (v) designed for, or capable of, utilizing, refining,
 4 processing, or converting five hundred thousand (500,000)
 5 tons of coal per year or more, or any addition thereto
 6 having an estimated cost in excess of two hundred fifty
 7 thousand dollars (\$250,000):

8 (b) ~~as each~~ electric transmission line and associated
 9 facilities of a design capacity of ~~thirty-four and one-half~~
 10 ~~(34.5)~~ more than sixty-nine (69) kilovolts or more, except
 11 that ~~the following transmission lines and associated~~
 12 ~~facilities shall be subject to certain exceptions under the~~
 13 ~~act:~~

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

19 ~~(ii) a transmission line and associated facilities with~~
 20 ~~a design capacity of one hundred sixty-one (161) kilovolts~~
 21 ~~or less and which will be constructed underground for a~~
 22 ~~distance of five (5) miles or less shall not be considered a~~
 23 ~~utility facility within the definitions of this act,~~

24 ~~(iii) a transmission line or associated facilities of a~~
 25 ~~design capacity of one hundred sixty-one (161) kilovolts or~~

~~less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70 806 (1)] and section 7, subsection (1) [70 807 (1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,~~

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

~~(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii); the term does not include an electric transmission line and associated facilities of a design capacity of less than two hundred thirty (230) kilovolts and ten (10) miles or less in length;~~

(c) ~~a gas or liquid transmission line~~ each pipeline and associated facilities designed for, or capable of, transporting gas, water, or liquid hydrocarbon products from or to a gasification or liquefaction facility located

within or without this state of the size indicated in subsections (a) (ii) and (a) (iii) subsection (3) (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;

(e) any underground in situ gasification of coal.

(4) ~~the words "associated~~ "Associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, substations, including distribution 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, except that the term does not include a facility.

(5) ~~the words "commence~~ "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 ~~utility~~ facility, but ~~do~~ does not include mean changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. ~~The words do include the commencement of eminent domain proceedings under Title 93, chapter 99,~~

1 ~~R.C.M. 1947, for land or rights of way upon which a utility~~
2 ~~facility may be constructed;~~

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

10 (c) the commencement of eminent domain proceedings
11 under Title 93, chapter 99, for land or rights of way upon
12 or over which a facility may be constructed;

13 (d) the relocation or upgrading of an existing
14 facility defined by subsection (3) (b) or (c), including
15 upgrading to a design capacity covered by subsection (3)
16 (b), except that the term does not include normal
17 maintenance or repair of an existing facility.

18 (6) ~~the word "municipality"~~ "Municipality" means any
19 county or municipality within this state.

20 (7) ~~the word "person" includes~~ "Person" means any
21 individual, group, firm, partnership, corporation,
22 cooperative, association, government subdivision, government
23 agency, local government, or other organization or entity.

24 (8) ~~the words "public utility" or "utility" mean~~
25 "Utility" means any person engaged in any aspect of the

1 production, storage, sale, delivery or furnishing of heat,
2 electricity, gas, or energy in any form for ultimate public
3 use.

4 (9) ~~"certificate"~~ "Certificate" means the certificate
5 of environmental compatibility and public need issued by the
6 board under this chapter ~~and that is~~ required for the
7 construction or operation of ~~any~~ a facility."

8 Section 4. Section 70-804, R.C.M. 1947, is amended to
9 read as follows:

10 "70-804. Certificate from board required prior to
11 construction of utility facility ~~exemptions~~. (1) ~~No~~ A
12 person shall may not commence to construct a utility
13 facility in the state without first ~~having obtained~~ applying
14 for and obtaining a certificate of environmental
15 compatibility and public need issued with respect to ~~such~~
16 the facility by the board. ~~Any~~ A facility, with respect to
17 which a certificate is ~~required~~ issued, shall may not
18 thereafter be constructed, operated ~~and~~ or maintained
19 except in conformity with ~~such~~ the certificate and any
20 terms, conditions and modifications contained therein. A
21 certificate may only be issued pursuant to this ~~act~~ chapter.

22 (2) A certificate may be transferred, subject to the
23 approval of the department, to a person who agrees to comply
24 with the terms, conditions and modifications contained
25 therein.

1 (3) This ~~act shall~~ chapter does not apply to ~~any~~
 2 ~~utility~~ a facility over which an agency of the federal
 3 government has exclusive jurisdiction.

4 (4) The board may adopt reasonable rules establishing
 5 exemptions from this chapter for the relocation,
 6 reconstruction, or upgrading of a facility that would
 7 otherwise be covered by this chapter and that is unlikely to
 8 have a significant environmental impact by reason of length,
 9 size, location, available space or right of way, or
 10 construction methods.

11 (5) A certificate is not required under this chapter
 12 for a facility under diligent on site physical construction
 13 or in operation on January 1, 1973."

14 Section 5. Section 70-805, R.C.M. 1947, is amended to
 15 read as follows:

16 "70-805. Surcharge on electric energy producer's
 17 license tax—administrative expenses—tax on gasification,
 18 liquefaction, uranium enrichment facilities. (1) Every
 19 "producer" as defined in chapter 16 of Title 84, ~~the~~
 20 ~~electrical energy producers' license tax,~~ shall, in addition
 21 to the sum required to be paid by that ~~act~~ chapter, pay an
 22 additional twenty-five hundredths percent (0.25%) of the
 23 gross amount as shown on the statement which is required by
 24 that ~~act~~ chapter, in the same manner and within the time
 25 provided by that ~~act~~ chapter. The ~~state board of~~

1 ~~equalization department of revenue~~ shall report to the state
 2 treasurer separately the amount transmitted to the state
 3 treasurer which is added to the electrical energy producers'
 4 license tax by this section ~~of this act~~.

5 (2) The legislature shall appropriate sufficient funds
 6 to finance the department's activities in carrying out its
 7 duties under this ~~act~~ chapter. The legislature shall provide
 8 a tax on gasification, liquefaction, coal conversion, and
 9 uranium enrichment facilities sufficient to produce an
 10 amount of revenue equal to that derived from electrical
 11 energy producers under this section."

12 Section 6. Section 70-806, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-806. Application for certification—filing and
 15 contents—~~filing fees—use of filing fees~~ notice of
 16 completion of facility—further fees—REFUND—proof of
 17 service on municipalities—waiver of time requirement
 18 amendment of application or certification. (1) (a) At
 19 ~~least two (2) years prior to anticipated commencement of~~
 20 ~~construction of a utility facility as defined in sections~~
 21 ~~70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (c), and~~
 22 ~~70-803 (3) (d) and at least nine (9) months prior to the~~
 23 ~~anticipated commencement date of the construction of a~~
 24 ~~utility facility as defined in section 70-803 (3) (b) (iii),~~
 25 ~~an~~ An applicant for a certificate shall file with the

1 department as a verified application, in such form as the
 2 ~~department may prescribe~~ board by rule or the department by
 3 order prescribes, containing the following information:

4 ~~(a)~~ (i) a description of the location and of the
 5 ~~utility~~ facility to be built thereon;

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

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

10 ~~(d)~~ (iv) a description of any reasonable alternate
 11 location or locations for the proposed facility, a
 12 description of the comparative merits and detriments of each
 13 location submitted, and a statement of the reasons why the
 14 primary proposed location is best suited for the facility;
 15 and

16 ~~(e)~~ (v) such other information as the applicant ~~may~~
 17 ~~consider~~ considers relevant or as the ~~board by rule or the~~
 18 department ~~may by regulation or order require~~ requires. A
 19 copy or copies of the studies referred to in clause ~~(b)~~ (ii)
 20 above shall be filed with the department, if ordered, and
 21 shall be available for public inspection.

22 (b) An application may consist of an application for
 23 two (2) or more facilities in combination, such as power
 24 units and transmission lines WHICH ARE PHYSICALLY AND
 25 DIRECTLY ATTACHED TO EACH OTHER AND ARE OPERATIONALLY A

1 SINGLE OPERATING ENTITY.

2 (2) ~~(a) A filing fee shall be deposited in the state~~
 3 ~~general fund. Said fee shall be~~ The applicant shall pay to
 4 the department a filing fee with the application, based
 5 upon the estimated cost of the facility according to the
 6 declining scale which follows: ~~The applicant shall pay the~~
 7 ~~accumulated sum calculated as follows:~~ three percent (3%)
 8 of any estimated cost up to one million dollars
 9 (\$1,000,000); plus one percent (1%) of any estimated cost
 10 over a million dollars and up to twenty million dollars
 11 (\$20,000,000); plus one-half of one percent (0.5%) of any
 12 estimated cost over twenty million dollars (\$20,000,000);
 13 and up to one hundred million dollars (\$100,000,000); plus
 14 one-quarter of one percent (0.25%) of any amount of
 15 estimated cost over one hundred million (\$100,000,000) and
 16 up to three hundred million dollars (\$300,000,000); plus
 17 one-tenth of one percent (0.1%) of any amount of estimated
 18 cost over three hundred million dollars (\$300,000,000). It
 19 is the intent of the legislature that the revenues derived
 20 from the filing fee be used by the department in compiling
 21 the information required for rendering a decision on a
 22 certificate and for carrying out its other responsibilities
 23 under this act. If an application consists of a combination
 24 of two (2) or more facilities, the filing fee shall be the
 25 total of the fees based on the TOTAL estimated cost of each

1 ~~facility considered separately~~ THE COMBINED FACILITIES.
 2 (b) If a certificate is issued by the board for the
 3 proposed facility, immediately upon completion of
 4 construction of the facility the applicant shall give a
 5 notice of completion to the department. As soon as possible
 6 after giving the notice of completion, the applicant shall
 7 file an affidavit with the department stating the actual
 8 cost of the facility in such detail as the department may
 9 require to determine whether a further fee is due. If the
 10 actual cost exceeds the estimated cost, the applicant shall
 11 file a further fee for the difference based upon the
 12 declining scale in subsection (2) (a) of this section. No
 13 further fee is required, however, if it is computed to be
 14 five hundred dollars (\$500) or less.
 15 (c) IF THE BOARD DENIES AN APPLICATION, AND THE
 16 BOARD'S DECISION IS UPHOLD IN ANY SUBSEQUENT COURT
 17 PROCEEDING, THE APPLICANT IS ENTITLED TO A REFUND OF THAT
 18 PORTION OF THE FILING FEE NOT EXCEEDED BY THE DEPARTMENT IN
 19 CARRYING OUT ITS RESPONSIBILITIES UNDER THIS CHAPTER.
 20 (d) THE DEPARTMENT MAY CONTRACT WITH A POTENTIAL
 21 APPLICANT UNDER THIS CHAPTER, IN ADVANCE OF THE FILING OF A
 22 FORMAL APPLICATION, FOR THE DEVELOPMENT OF INFORMATION OR
 23 PROVISION OF SERVICES REQUIRED HEREUNDER. PAYMENTS MADE TO
 24 THE DEPARTMENT UNDER SUCH A CONTRACT SHALL BE CREDITED
 25 AGAINST THE FEE PAYABLE HEREUNDER.

1 (3) ~~Each~~ An application shall be accompanied by proof
 2 of service of a copy of ~~each~~ the application on the chief
 3 executive officer of each municipality and the head of each
 4 government agency, charged with the duty of protecting the
 5 environment or of planning land use, in the area in which
 6 any portion of ~~each~~ the facility is to be located, both as
 7 primarily and as alternatively proposed. The copy of ~~each~~
 8 the application shall be accompanied by a notice specifying
 9 the date on or about which the application is to be filed.
 10 (4) ~~Each~~ An application shall also be accompanied by
 11 proof that public notice thereof was given to persons,
 12 residing in the municipalities entitled to receive notice
 13 under subsection (3) of this section, by the publication of
 14 a summary of the application, and the date on or about which
 15 it is to be filed, in ~~each~~ those newspapers as will serve
 16 substantially to inform ~~each~~ those persons of the
 17 application.
 18 (5) Inadvertent failure of service on, or notice to,
 19 any of the municipalities, government agencies or persons
 20 identified in subsections (3) and (4) of this section may be
 21 cured pursuant to orders of the department designed to
 22 afford them adequate notice to enable their effective
 23 participation in the proceeding. In addition, the department
 24 may, after filing, require the applicant to serve notice of
 25 the application or copies thereof or both upon such other

1 persons, and file proof thereof, as the department may deem
2 appropriate.

3 (6) An application for an amendment of an application
4 or a certificate shall be in such form and contain such
5 information as the department shall prescribe board by rule
6 or the department by order prescribes. Notice of such an
7 application shall be given as set forth in subsections (3)
8 and (4) of this section. If an amendment to an original
9 application would result in a substantial change of the
10 original application, such an amendment shall be considered
11 as a new application and a new filing fee shall be required.

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

19 ~~(8) The board may, in its discretion, waive the~~
20 ~~necessity of filing an application where utility facilities~~
21 ~~are being relocated pursuant to sections 22-2414 through~~
22 ~~22-2416, R.C.M. 1947, and where it is satisfied after an~~
23 ~~examination of the environmental impact statement filed~~
24 ~~pursuant to chapter 65 of Title 69, R.C.M. 1947, that such~~
25 ~~relocation will not significantly affect the environment."~~

1 Section 7. Section 70-807, R.C.M. 1947, is amended to
2 read as follows:

3 "70-807. Study, evaluation and report on proposed
4 facility ~~hearing on~~ application for amendment of
5 certificate ~~hearings.~~ (1) Upon receipt of an application
6 complying with section 70-806, the department shall commence
7 an intensive study and evaluation of the proposed facility
8 and its effects, ~~pursuant to section 70-816 of this act~~
9 ~~considering all the criteria listed in sections 70-810 and~~
10 ~~70-816.~~ Within ~~six hundred (600) days~~ two (2) years
11 following receipt of the an application for a facility as
12 defined in ~~sections~~ subsections 70-803 (3) (a), ~~70-803 (b)~~
13 ~~(iv), 70-803 (3) (e), and 70-803 (3) (d) and for a facility~~
14 as defined in subsections 70-803 (3) (b) and (c) which is
15 more than thirty (30) miles in length, and within one
16 ~~hundred eighty (180) days~~ one (1) year for a facility as
17 defined in ~~sections 70-803 (b) (iii)~~ subsections 70-803 (3)
18 (b) and (c) which is thirty (30) miles or less in length,
19 the department shall make a report to the board, which shall
20 contain the department's studies, evaluations,
21 recommendations, other pertinent documents resulting from
22 its study and evaluation pursuant to ~~section 70-816 of this~~
23 ~~act,~~ and the final environmental impact statement. If the
24 application is for a facility which was not listed or
25 proposed in a long range plan submitted by the applicant to

~~the department at least six (6) months before the filing of the application pursuant to section 70-814, the department shall then have three (3) years and two (2) years, respectively, to make its report to the board.~~ If the application is for a combination of two (2) 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.

(2) The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, 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. ~~Such information~~ The report may include opinions as to the advisability of granting, ~~or 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.

~~(2)~~ (3) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if 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 ~~such~~ the facility other than as provided in the alternates set forth in the application.

~~(3) (4) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date for a hearing to begin not more than sixty (60) days after such the receipt.~~ WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A DATE FOR THE CERTIFICATION HEARING, WHICH SHALL COMMENCE WITHIN SIX (6) MONTHS AFTER RECEIPT OF THE DEPARTMENT'S REPORT."

Section 8. Section 70-808, R.C.M. 1947, is amended to read as follows:

"70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

- (a) the applicant;
- (b) each municipality and government agency entitled

to receive service of a copy of the application under subsection ~~(3) of section 6 [70-806 (3)] of this act~~ 70-806 (3); and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection ~~(4) of section 6 [70-806 (4)] of this act~~ 70-806 (4); any nonprofit organization, formed in whole or in part

1 to promote conservation or natural beauty, to protect the
 2 environment, personal health or other biological values, to
 3 preserve historical sites, to promote consumer interests, to
 4 represent commercial and industrial groups, or to promote
 5 the orderly development of the areas in which the facility
 6 is to be located; or any other interested person; and

7 (d) the department.

8 (2) Any party identified in subparagraphs (b) and (c)
 9 of subsection (1) of this section waives his right to be a
 10 party if he does not participate orally at the hearing
 11 before the board."

12 SECTION 9. SECTION 70-809, R.C.M. 1947, IS AMENDED TO
 13 READ AS FOLLOWS:

14 "70-809. Record of hearing — procedure — rules of
 15 evidence — burden of proof. (1) Any studies,
 16 investigations, reports, or other documentary evidence,
 17 including those prepared by the department, which any party
 18 wishes the board to consider or which the board itself
 19 expects to utilize or rely upon, shall be made a part of the
 20 record; a record shall be made of the hearing and of all
 21 testimony taken; and the contested case procedures of the
 22 Montana Administrative Procedure Act [~~82-424 to 82-425~~
 23 Title 82, chapter 42, R.C.M. 1947] shall apply to the
 24 hearing, except that neither common law nor statutory rules
 25 of evidence need apply, but the board may make rules

1 designed to exclude repetitive, redundant or irrelevant
 2 testimony.

3 (2) In a certification proceeding held under this
 4 chapter, the applicant has the burden of showing by clear
 5 and convincing evidence that the application should be
 6 granted and that the criteria of section 70-810 are met.

7 (3) Any party to a certification proceeding held under
 8 this chapter may conduct prehearing discovery of all other
 9 known parties, including obtaining subpoenas of witnesses
 10 and subpoenas duces tecum for the production of such books,
 11 records, papers, documents and other objects as may be
 12 necessary and proper for the purposes of the proceeding, and
 13 the taking of testimony by deposition upon oral examination
 14 or written interrogatories for the purpose of discovery or
 15 for use as evidence in the hearing or for both purposes.

16 (4) If the board appoints a hearing examiner to
 17 conduct any certification proceedings under this chapter,
 18 the hearing examiner may not be a member of the board or an
 19 employee of the department."

20 Section 10. Section 70-810, R.C.M. 1947, is amended to
 21 read as follows:

22 "70-810. Decision of board—findings necessary for
 23 certificate—conditions imposed—~~service of decision on~~
 24 parties. (1) The ~~within ninety (90) days after the last day~~
 25 of the hearing, the board shall make complete findings,

1 issue an opinion, and render a decision upon the record,
 2 either granting or denying the application as filed, or
 3 granting it upon such terms, conditions, or modifications of
 4 the construction, operation or maintenance of the ~~utility~~
 5 facility as the board ~~may deem~~ considers appropriate. The
 6 board may not grant a certificate either as proposed by the
 7 applicant or as modified by the board unless it shall find
 8 and determine:

- 9 (a) the basis of the need for the facility;
- 10 (b) the nature of the probable environmental impact;
- 11 (c) that the facility represents the minimum adverse
 12 environmental impact, considering the state of available
 13 technology and the nature and economics of the various
 14 alternatives;
- 15 (d) each of the criteria listed in section ~~16 [70-816]~~
 16 ~~of this act 70-816~~;
- 17 (e) in the case of an electric, gas, or liquid
 18 transmission line or aqueduct, what part, if any, of the
 19 line or aqueduct shall be located underground; that ~~such the~~
 20 facility is consistent with regional plans for expansion of
 21 the appropriate grid of the utility systems serving the
 22 state and interconnected utility systems; and that ~~such~~
 23 ~~facilities~~ the facility will serve the interests of utility
 24 system economy and reliability;
- 25 (f) that the location of the facility as proposed

1 conforms to applicable state and local laws and regulations
 2 issued thereunder, except that the board may refuse to apply
 3 any local law or regulation if it finds that, as applied to
 4 the proposed facility, ~~such the~~ the law or regulation is
 5 unreasonably restrictive in view of the existing technology,
 6 or of factors of cost or economics, or of the needs of
 7 consumers whether located inside or outside of the directly
 8 affected government subdivisions;

- 9 (g) that the facility will serve the public interest,
 10 convenience and necessity; and
- 11 (h) that duly authorized state and federal air and
 12 water quality agencies have certified that the proposed
 13 facility will not violate state and federally established
 14 standards and implementation plans; the judgments of duly
 15 authorized air and water quality agencies are conclusive on
 16 all questions related to the satisfaction of state and
 17 federal air and water quality standards.

18 (2) If the board determines that the location of all
 19 or a part of the proposed facility should be modified, it
 20 may condition its certificate upon such modification,
 21 provided that the municipalities, and persons residing
 22 therein, affected by the modification, ~~shall~~ have been given
 23 reasonable notice of the modification.

24 (3) ~~A copy of the decision and any opinion issued with~~
 25 ~~the decision shall be served upon each party. In determining~~

1 that the facility will serve the public interest,
 2 convenience, and necessity under subsection (1) (g) of this
 3 section, the board shall consider:

4 (i) the items listed in subsections (1) (a) through
 5 (b) of this section;

6 (ii) the benefits to the applicant and the state
 7 resulting from the proposed facility;

8 (iii) the effects of the economic activity resulting
 9 from the proposed facility;

10 (iv) the effects of the proposed facility on the
 11 public health, welfare, and safety;

12 (v) any other factors that it considers relevant."

13 Section 11. Section 70-811, R.C.M. 1947, is amended to
 14 read as follows:

15 *70-811. Opinion issued with decision—contents of
 16 certificate—waiver of time requirements—facilities for
 17 which certificate required. (1) In rendering a decision on
 18 an application for a certificate, the board shall issue an
 19 opinion stating its reasons for the action taken. If the
 20 board has found that any regional or local law or
 21 regulation, which would be otherwise applicable, is
 22 unreasonably restrictive pursuant to ~~paragraph (f) of~~
 23 ~~subsection (1) of section 10 [70-810 (1) (f)] of this act~~
 24 subsection 70-810 (1) (f), it shall state in its opinion the
 25 reasons therefor.

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

3 (a) An environmental evaluation statement related to
 4 the ~~facilities~~ facility being certified. The statement shall
 5 include, but not be limited to, analysis of the following
 6 information:

7 (i) the environmental impact of the proposed facility;

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

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

12 (iv) alternatives to the proposed ~~facilities~~ facility;
 13 and

14 (v) a plan for monitoring environmental effects of the
 15 proposed facility.

16 (b) A statement signed by the applicant showing
 17 agreement to comply with the requirements of this ~~act~~
 18 chapter and the conditions of the certificate.

19 (3) ~~The---time---requirement---of---section---6---[70-806]~~
 20 ~~70-806 and any ANY~~ of the provisions described in sections 7
 21 ~~through---11---[70-807---to---70-811]---of---this---act~~ 70-807 through
 22 70-811 may be waived by the board, for good cause shown,
 23 with respect to applications filed before January 1, 1975.
 24 Applications for certificates under this subsection ~~(3)~~ must
 25 be promptly filed. ~~A certificate is not required under this~~

1 ~~act for facilities under construction or in operation on~~
 2 ~~January 1, 1973. However, a certificate must be obtained for~~
 3 ~~associated facilities upon which construction has not~~
 4 ~~commenced before January 1, 1973, subject to the waiver~~
 5 ~~provisions of this subsection.~~

6 (4) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF
 7 PROVISIONS OF SECTIONS 70-807 THROUGH 70-811 IF THE
 8 APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD,
 9 AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE
 10 PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, THAT
 11 AN IMMEDIATE, URGENT NEED FOR A FACILITY EXISTS AND THAT THE
 12 APPLICANT DID NOT HAVE KNOWLEDGE THAT THE NEED FOR THE
 13 FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO FULLY COMPLY
 14 WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811."

15 Section 12. Section 70-812, R.C.M. 1947, is amended to
 16 read as follows:

17 ~~*70-812. Review of denial of certificate by~~
 18 ~~board procedure Judicial review of board decision. (4) Any~~
 19 ~~party as defined in section 8 [70-808] of this act 70-808~~
 20 ~~aggrieved by the final decision of the board on an~~
 21 ~~application for a certificate, may obtain judicial review of~~
 22 ~~that decision by the filing of a petition in a state~~
 23 ~~district court of competent jurisdiction, within thirty (30)~~
 24 ~~days after the issuance of such final decision. Upon receipt~~
 25 ~~of such petition, the department shall deliver to the court~~

1 ~~a copy of the written transcript of the record of the~~
 2 ~~proceeding before it and a copy of the board's decision and~~
 3 ~~opinion entered therein which shall constitute the record on~~
 4 ~~judicial review. A copy of such transcript, decision and~~
 5 ~~opinion shall remain on file with the department and shall~~
 6 ~~be available for public inspection.~~

7 ~~(2) If a decision is issued after a hearing on an~~
 8 ~~application for a certificate, such decision is final for~~
 9 ~~purposes of judicial review. The judicial review procedure~~
 10 ~~shall be the same as that for contested cases under the~~
 11 ~~Montana Administrative Procedure Act [82-4201 to 82-4225]."~~

12 Section 13. Section 70-813, R.C.M. 1947, is amended to
 13 read as follows:

14 ~~*70-813. Jurisdiction of courts restricted. Except as~~
 15 ~~expressly set forth in sections 42, 47 and 21 [70-812,~~
 16 ~~70-817 and 70-821] of this act 70-812, 70-817, and 70-821,~~
 17 ~~no court of this state shall have has jurisdiction to hear~~
 18 ~~or determine any issue, case or controversy concerning any~~
 19 ~~matter which was or could have been determined in a~~
 20 ~~proceeding before the board under this act chapter or to~~
 21 ~~stop or delay the construction, operation or maintenance of~~
 22 ~~a utility facility, except to enforce compliance with this~~
 23 ~~act chapter or the provisions of a certificate issued~~
 24 ~~hereunder pursuant to sections 19 or 21 [70-819 or 70-821]~~
 25 ~~of this act 70-819 or 70-821."~~

1 Section 14. Section 70-814, R.C.M. 1947, is amended to
2 read as follows:

3 "70-814. Annual long-range plan submitted—
4 contents—available to public. (1) Each utility, and each
5 person contemplating the construction of a facility within
6 this state in the ensuing ten (10) years, shall furnish
7 annually to the department for its review, a long-range plan
8 for the construction and operation of ~~utility~~ facilities.
9 ~~Such~~ The plan shall be submitted on April 1 of each year. ~~The plan and~~
10 ~~shall~~ include the following:

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

16 (b) IN THE CASE OF ENERGY PRODUCING FACILITIES a
17 description of efforts by the utility or person to
18 coordinate the plan with other utilities or persons so as to
19 provide a coordinated regional plan for meeting the ~~utility~~
20 facilities ENERGY needs of the region;

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

1 (d) projections of the demand for the service rendered
2 by the utility or person and explanation of the basis for
3 ~~such~~ those projections, and a description of the manner and
4 extent to which the proposed facilities will meet the
5 projected demand; and

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

10 (2) The plan shall be made available to the public by
11 the department, and the utility or person shall ~~be required~~
12 ~~to~~ give public notice throughout the state of its plan by
13 filing the plan with the environmental quality council, the
14 department of health and environmental ~~science~~ sciences, the
15 department of highways, the department of public service
16 regulation, the department of state lands and the department
17 of intergovernmental relations. Citizen environmental
18 protection and resource planning groups, and other
19 interested persons may obtain a plan by written request and
20 payment therefor to the department."

21 Section 15. Section 70-815, R.C.M. 1947, is amended to
22 read as follows:

23 "70-815. Study of planned facilities included in
24 annual long-range report. If a utility or person lists and
25 identifies a proposed ~~utility~~ facility in its plan,

1 submitted pursuant to section ~~14 [70-814] of this act~~
 2 70-814, as one on which construction is proposed to be
 3 commenced within the five (5) year period ~~next proceeding~~
 4 following submission of the plan, the department shall
 5 commence examination and evaluation of the proposed site to
 6 determine whether construction of the proposed facility
 7 would unduly impair the environmental values in section ~~16~~
 8 ~~[70-816] of this act~~ 70-816. This study may be continued
 9 until such time as a utility person files an application for
 10 a certificate under section ~~6 [70-806] of this act~~ 70-806.
 11 Information gathered under this section may be used to
 12 support findings and recommendations required for issuance
 13 of a certificate."

14 Section 16. Section 70-816, R.C.M. 1947, is amended to
 15 read as follows:

16 "70-816. Environmental factors considered in
 17 evaluating long-range plans. In evaluating long-range plans,
 18 conducting five-year site reviews, and evaluating
 19 applications for certificates ~~of site and facility~~, the
 20 board and department shall give consideration to the
 21 following list of environmental factors and may, by
 22 regulation rule, add to the categories of this section:

- 23 (1) Energy needs.
- 24 (a) Growth in demand and projections of need.
- 25 (b) Availability and desirability of alternative

- 1 sources of energy.
- 2 (c) Availability and desirability of alternative
- 3 sources of energy in lieu of the proposed facility.
- 4 (d) Promotional activities of the utility which may
- 5 have given rise to the need for this facility.
- 6 (e) Socially beneficial uses of the output of this
- 7 facility, including its uses to protect or enhance
- 8 environmental quality.
- 9 (f) Conservation activities which could reduce the
- 10 need for more energy.
- 11 (g) Research activities of the utility of new
- 12 technology available to it which might minimize
- 13 environmental impact.
- 14 (2) Land use impacts.
- 15 (a) Area of land required and ultimate use.
- 16 (b) Consistency with areawide state and regional land
- 17 use plans.
- 18 (c) Consistency with existing and projected nearby
- 19 land use.
- 20 (d) Alternative uses of the site.
- 21 (e) Impact on population already in the area;
- 22 population attracted by construction or operation of the
- 23 facility itself; impact of availability of energy from this
- 24 facility on growth patterns and population dispersal.
- 25 (f) Geologic suitability of the site or route.

1 (g) Seismologic characteristics.

2 (h) Construction practices.

3 (i) Extent of erosion, scouring, wasting of land—both
4 at site and as a result of fossil fuel demands of the
5 facility.

6 (j) Corridor design and construction precautions for
7 transmission lines or aqueducts.

8 (k) Scenic impacts.

9 (l) Effects on natural systems, wildlife, plant life.

10 (m) Impacts on important historic architectural,
11 archeological, and cultural areas and features.

12 (n) Extent of recreation opportunities and related
13 compatible uses.

14 (o) Public recreation plan for the project.

15 (p) Public facilities and accommodation.

16 (q) Opportunities for joint use with energy intensive
17 industries, or other activities to utilize the waste heat
18 from facilities.

19 (3) Water resources impacts.

20 (a) Hydrologic studies of adequacy of water supply and
21 impact of facility on stream flow, lakes and reservoirs.

22 (b) Hydrologic studies of impact of facilities on
23 ground water.

24 (c) Cooling system evaluation including consideration
25 of alternatives.

1 (d) Inventory of effluents including physical,
2 chemical, biological, and radiological characteristics.

3 (e) Hydrologic studies of effects of effluents on
4 receiving waters, including mixing characteristics of
5 receiving waters, changed evaporation due to temperature
6 differentials, and effect of discharge on bottom sediments.

7 (f) Relationship to water quality standards.

8 (g) Effects of changes in quantity and quality on
9 water use by others, including both withdrawal and in situ
10 uses; relationship to projected uses; relationship to water
11 rights.

12 (h) Effects on plant and animal life, including algae,
13 macroinvertebrates, and fish population.

14 (i) Effects on unique or otherwise significant
15 ecosystems; e.g., wetlands.

16 (j) Monitoring programs.

17 (4) Air quality impacts.

18 (a) Meteorology. Wind direction and velocity, ambient
19 temperature ranges, precipitation values, inversion
20 occurrence, other effects on dispersion.

21 (b) Topography. Factors affecting dispersion.

22 (c) Standards in effect and projected for emissions,
23 design capability to meet standards.

24 (d) Emissions and controls.

25 (i) Stack design.

- 1 (ii) Particulates.
- 2 (iii) Sulfur Oxides.
- 3 (iv) Oxides of Nitrogen.
- 4 (v) Heavy metals, trace elements, radioactive
- 5 materials and other toxic substances.
- 6 (e) Relationship to present and projected air quality
- 7 of the area.
- 8 (f) Monitoring program.
- 9 (5) Solid wastes impact.
- 10 (a) Solid waste inventory.
- 11 (b) Disposal program.
- 12 (c) Relationship of disposal practices to
- 13 environmental quality criteria.
- 14 (d) Capacity of disposal sites to accept projected
- 15 waste loadings.
- 16 (6) Radiation impacts.
- 17 (a) Land use controls over development and population.
- 18 (b) Wastes and associated disposal program for solid,
- 19 liquid, radioactive and gaseous wastes.
- 20 (c) Analyses and studies of the adequacy of
- 21 engineering safeguards and operating procedures.
- 22 (d) Monitoring. Adequacy of devices and sampling
- 23 techniques.
- 24 (7) Noise impacts.
- 25 (a) Construction period levels.

- 1 (b) Operational levels.
- 2 (c) Relationship of present and projected noise levels
- 3 to existing and potential stricter noise standards.
- 4 (d) Monitoring. Adequacy of devices and methods."
- 5 Section 17. Section 70-817, R.C.M. 1947, is amended to
- 6 read as follows:
- 7 "70-817. Additional requirements by other governmental
- 8 agencies not permitted after issuance of certificate--
- 9 exceptions. Notwithstanding any other ~~provision of law~~, no
- 10 state or regional agency, or municipality or other local
- 11 government, may require any approval, consent, permit,
- 12 certificate, or other condition for the construction,
- 13 operation, or maintenance of a ~~utility~~ facility authorized
- 14 by a certificate issued pursuant to ~~the provisions of this~~
- 15 ~~act Chapter~~; except that the state air and water quality
- 16 agency or agencies shall retain authority which they have or
- 17 may be granted to determine compliance of the proposed
- 18 facility with state and federal standards and implementation
- 19 plans for air and water quality and to enforce those
- 20 standards. ~~Nothing in this act shall~~ This chapter does not
- 21 prevent the application of state laws for the protection of
- 22 employees engaged in the construction, operation or
- 23 maintenance of ~~such a~~ facility."
- 24 Section 18. Section 70-818, R.C.M. 1947, is amended to
- 25 read as follows:

1 "70-818. Revocation or suspension of certificate--
 2 voiding of application. (1) A certificate may be revoked
 3 or suspended by the board:

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

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

10 ~~(3)~~ (c) for violation of ~~the provisions~~ any provision
 11 of this ~~act~~ chapter, the ~~regulations~~ rules issued
 12 thereunder, or orders of the board or department.

13 (2) An application may be voided by the department:

14 (a) for any material AND KNOWINGLY false statement in
 15 the application or in accompanying statements or studies
 16 required of the applicant;

17 (b) for failure to file an application in
 18 substantially the form and content required by this chapter
 19 and the rules adopted thereunder; or

20 (c) for failure to deposit the filing fee with the
 21 application as required by section 70-806."

22 Section 19. Section 70-819, R.C.M. 1947, is amended to
 23 read as follows:

24 "70-819. Enforcement of ~~act~~ chapter by residents of
 25 state--statement of failure to enforce act--mandamus

1 --private suits for damages. (1) A resident of this state,
 2 with knowledge that a requirement of this ~~act~~ chapter or a
 3 rule adopted ~~under this act~~, under it is not being enforced
 4 by a public officer or employee whose duty it is to enforce
 5 the requirement or rule, may bring the failure to enforce to
 6 the attention of the public officer or employee by a written
 7 statement under oath that shall state the specific facts of
 8 the failure to enforce the requirement or rule. Knowingly
 9 making false statements or charges in the affidavit subjects
 10 the affiant to penalties prescribed under the law of
 11 perjury.

12 (2) If the public officer or employee neglects or
 13 refuses for an unreasonable time after receipt of the
 14 statement to enforce the requirement or rule, the resident
 15 may bring an action of mandamus in the district court of the
 16 first judicial district of this state, in and for the county
 17 of Lewis and Clark. If the court finds that a requirement of
 18 this ~~act~~ chapter or a rule adopted ~~under this act~~ under it
 19 is not being enforced, the court may order the public
 20 officer or employee, whose duty it is to enforce the
 21 requirement or rule, to perform his duties. If he fails to
 22 do so, the public officer or employee shall be held in
 23 contempt of court and is subject to the penalties provided
 24 by law.

25 (3) An owner of an interest in real property who

1 obtains all or part of his supply of water for domestic,
 2 agricultural, industrial, or other legitimate use from a
 3 surface or underground source may sue a ~~utility~~ person to
 4 recover damages for contamination, diminution, or
 5 interruption of the water supply, proximately resulting from
 6 the operation of a ~~utility~~ facility. The remedies
 7 enumerated in this subsection do not exclude the use of any
 8 other remedy which may be available under the laws of the
 9 state."

10 Section 20. Section 70-820, R.C.M. 1947, is amended to
 11 read as follows:

12 *70-820. Adoption of rules—~~monitoring of facilities.~~

13 (1) The board ~~and department~~ may adopt rules implementing
 14 the provisions of this ~~act~~ chapter, including, but not
 15 limited to, rules:

16 (a) governing the form and content of applications;

17 (b) further defining the terms used in this chapter;

18 (c) governing the form and content of long-range
 19 plans;

20 ~~(d) designed to reduce the rate of growth of energy~~
 21 ~~demands by limiting promotional activities by energy~~
 22 ~~suppliers;~~

23 ~~(e) any other rules the board considers necessary~~
 24 ~~to accomplish the purposes and objectives of this chapter.~~

25 (2) The board and the department shall ~~have continuing~~

1 ~~authority and responsibility for monitoring~~ monitor the
 2 operations of all certificated facilities, for assuring
 3 continuing compliance with this ~~act~~ chapter and certificates
 4 issued hereunder, and for discovering and preventing
 5 noncompliance with this ~~act~~ chapter and ~~such~~ the
 6 certificates.

7 (3) The board shall adopt rules requiring every person
 8 who proposes to gather geological data by boring of test
 9 holes or other underground exploration, investigation, or
 10 experimentation, related to the possible future development
 11 of an ~~underground-utility~~ a facility employing geothermal
 12 resources, to comply with the following requirements:

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

14 (b) Submit to the department a description of the area
 15 involved;

16 (c) Submit to the department a statement of the
 17 proposed activities to be conducted and the methods to be
 18 utilized;

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

21 (e) Submit such other information as the board may
 22 require in the rules."

23 Section 21. Section 70-821, R.C.M. 1947, is amended to
 24 read as follows:

25 *70-821. Penalties for violation of ~~act~~ chapter—civil

1 action by attorney general. (1) Whoever
 2 (a) without first obtaining a certificate ~~of site and~~
 3 ~~facility~~ required under section 4 ~~(70-804)~~ 70-804, commences
 4 to construct or operate a ~~utility~~ facility ~~after the~~
 5 ~~effective date of this act~~; or
 6 (b) having first obtained a certificate ~~of site and~~
 7 ~~facility~~, constructs, operates or maintains a ~~utility~~
 8 facility other than in compliance with the certificate; or
 9 (c) violates any other provision of this chapter or
 10 any rule or order adopted thereunder, or KNOWINGLY submits
 11 false information in any report or application required by
 12 this chapter or rule or order adopted thereunder; or
 13 ~~(e)~~ (d) causes any of the aforementioned acts to
 14 occur; shall be liable to a civil penalty of not more than
 15 ten thousand dollars (\$10,000) for each violation. Each day
 16 of a continuing violation shall constitute a separate
 17 offense. The penalty shall be recoverable in a civil suit
 18 brought by the attorney general on behalf of the state in
 19 the first district court of Montana.
 20 (2) Whoever knowingly and willfully violates
 21 subsection (1) shall be fined not more than ten thousand
 22 dollars (\$10,000) for each violation or imprisoned for not
 23 more than one (1) year, or both. Each day of a continuing
 24 violation shall constitute a separate offense.
 25 (3) In addition to any penalty provided in subsections

1 (1) or (2), whenever the department determines that a person
 2 is violating or is about to violate any of the provisions of
 3 this section, it shall may refer the matter to the attorney
 4 general who may bring a civil action on behalf of the state
 5 in the first district court of Montana for injunctive or
 6 other appropriate relief against the violation and to
 7 enforce ~~the act~~ this chapter or a certificate issued
 8 hereunder, and upon a proper showing a permanent or
 9 preliminary injunction or temporary restraining order shall
 10 be granted without bond. The department shall also enforce
 11 this chapter and bring legal actions to accomplish the
 12 enforcement through its own legal counsel.
 13 (4) All fines collected shall be deposited in the
 14 state general fund."
 15 Section 22. Section 70-822, R.C.M. 1947, is amended to
 16 read as follows:
 17 "70-822. Grants, gifts and funds. The department ~~shall~~
 18 ~~have authority to~~ may receive grants, gifts and other funds
 19 from any public or private source, to assist in its
 20 activities under this ~~act~~ chapter."
 21 Section 23. Section 70-823, R.C.M. 1947, is amended to
 22 read as follows:
 23 "70-823. ~~Act~~ Chapter supersedes other laws or
 24 regulations. This ~~act~~ chapter supersedes other laws or
 25 regulations. If any provision of this ~~act~~ chapter is in

1 conflict with any other law of this state, or any rule or
2 regulation promulgated thereunder, this ~~act~~ chapter shall
3 govern and control, and ~~such~~ the other law, rule or
4 regulation shall be deemed superseded for the purpose of
5 this ~~act~~ chapter."

6 Section 24. Amendments not indicative of legislative
7 interpretation of 1973 act—savings clause. The amendments
8 made by this act, or proposed to be made if this act should
9 not be enacted, do not indicate an expression of legislative
10 intent as to the interpretation of any provision of the
11 Montana Utility Siting Act of 1973 as it existed prior to
12 the introduction or enactment of this act. This act shall
13 not affect the outcome of any judicial or quasi-judicial
14 administrative proceeding commenced prior to the effective
15 date of this act.

16 Section 25. Applicability. The amendments made by
17 this act apply only to applications received by the
18 department after January 1, 1975. PERSONS REQUIRED TO FILE
19 LONG-RANGE PLANS UNDER THE AMENDMENTS MADE BY SECTION 14 OF
20 THIS ACT TO SECTION 70-814, M.C.M. 1947, SHALL HAVE UNTIL
21 JUNE 1, 1975, TO FILE SUCH PLANS.

22 Section 26. This act is effective on its passage and
23 approval.

-End-

1 HOUSE BILL NO. 581

2 INTRODUCED BY BARDANOUVE, MELOY, HUENNEKENS, KEMMIS, VINCENT,
3 LIEN, DRISCOLL, GUNDERSON, HARPER, BRADLEY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
6 70-801 THROUGH ~~70-802, 70-810~~ THROUGH 70-823, R.C.M. 1947,
7 TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 Section 1. Section 70-801, R.C.M. 1947, is amended to
12 read as follows:

13 "70-801. Short title. This ~~act~~ chapter shall be known
14 and may be cited as the Montana ~~Utility~~ MAJOR FACILITY
15 Siting Act of 1973."

16 Section 2. Section 70-802, R.C.M. 1947, is amended to
17 read as follows:

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

1 The legislature finds that the construction of
2 additional power ~~and~~ or energy conversion facilities may be
3 necessary to meet the increasing need for electricity, ~~and~~
4 ~~other~~ energy, and other products, and that ~~such~~ these
5 facilities have an effect on the environment, an impact on
6 population concentration, and an effect on the welfare of
7 the citizens of this state. Therefore, it is necessary to
8 ensure that the location, construction and operation of
9 power and energy conversion facilities will produce minimal
10 adverse effects on the environment and upon the citizens of
11 this state by providing that ~~no~~ a power or energy conversion
12 facility ~~shall hereafter~~ may not be constructed or operated
13 within this state without a certificate of environmental
14 compatibility and public need acquired pursuant to this ~~act~~
15 chapter."

16 Section 3. Section 70-803, R.C.M. 1947, is amended to
17 read as follows:

18 "70-803. Definitions. ~~The following words, when used~~
19 ~~in this act, shall have the following meanings unless~~
20 ~~otherwise clearly apparent from the context~~ In this chapter,
21 unless the context requires otherwise:

22 (1) ~~the word "department"~~ "Department" means the
23 department of natural resources and conservation provided
24 for in Title 82A, chapter 15.

25 (2) ~~the word "board"~~ "Board" means the board of

1 natural resources and conservation provided for in section
2 82A-1509.

3 (3) ~~the words "utility facility" or "facility" mean~~
4 "facility" means:

5 (a) ~~any energy-generating and conversion each plant,~~
6 unit, or other facility and associated facilities, except
7 for oil and gas refineries.

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

14 (ii) designed for, or capable of, producing one
15 ~~hundred million (100,000,000)~~ twenty-five million
16 (25,000,000) cubic feet of gas per day or more, or any
17 addition thereto having an estimated cost in excess of two
18 hundred fifty thousand dollars (\$250,000), or

19 (iii) designed for, or capable of, producing ~~fifty~~
20 ~~thousand (50,000)~~ twenty-five thousand (25,000) barrels of
21 liquid hydrocarbon products per day or more, or any addition
22 thereto having an estimated cost in excess of two hundred
23 fifty thousand dollars (\$250,000), or

24 (iv) designed for, or capable of, enriching uranium
25 minerals, or any addition thereto having an estimated cost

1 in excess of two hundred fifty thousand dollars (\$250,000),
2 or

3 (v) designed for, or capable of, utilizing, refining,
4 processing, or converting five hundred thousand (500,000)
5 tons of coal per year or more, or any addition thereto
6 having an estimated cost in excess of two hundred fifty
7 thousand dollars (\$250,000);

8 (b) ~~each~~ electric transmission line and associated
9 facilities of a design capacity of ~~thirty-four and one-half~~
10 ~~(34.5)~~ more than sixty-nine (69) kilovolts or more, except
11 that ~~the following transmission lines and associated~~
12 ~~facilities shall be subject to certain exceptions under the~~
13 ~~act.~~

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

19 ~~(ii) a transmission line and associated facilities with~~
20 ~~a design capacity of one hundred sixty-one (161) kilovolts~~
21 ~~or less and which will be constructed underground for a~~
22 ~~distance of five (5) miles or less shall not be considered a~~
23 ~~utility facility within the definitions of this act,~~

24 ~~(iii) a transmission line or associated facilities of a~~
25 ~~design capacity of one hundred sixty-one (161) kilovolts or~~

~~less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806 (1)] and section 7, subsection (1) [70-807 (1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,~~

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

~~(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii); the term does not include an electric transmission line and associated facilities of a design capacity of less than two hundred thirty (230) kilovolts and ten (10) miles or less in length:~~

(c) ~~a gas or liquid transmission line~~ each pipeline and associated facilities designed for, or capable of, transporting gas, water, or liquid hydrocarbon products from or to a ~~gasification or liquefaction~~ facility located

within or without this state of the size indicated in subsections (a) (ii) and (a) (iii) subsection (3) (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;

(e) any underground in situ gasification of coal.

~~(4) the words "associated~~ "Associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, substations, including distribution 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, except that the term does not include a facility.

~~(5) the words "commence~~ "Commence to construct" mean means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but ~~do~~ does not include mean changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. ~~The words do include the commencement of eminent domain proceedings under Title 93, chapter 99,~~

1 ~~R.C.M. 1947, for land or rights of way upon which a utility~~
 2 ~~facility may be constructed;~~

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

10 (c) the commencement of eminent domain proceedings
 11 under Title 93, chapter 99, for land or rights of way upon
 12 or over which a facility may be constructed;

13 (d) the relocation or upgrading of an existing
 14 facility defined by subsection (3) (b) or (c), including
 15 upgrading to a design capacity covered by subsection (3)
 16 (b), except that the term does not include normal
 17 maintenance or repair of an existing facility.

18 (6) ~~the word "municipality"~~ "municipality" means any
 19 county or municipality within this state.

20 (7) ~~the word "person" includes~~ "Person" means any
 21 individual, group, firm, partnership, corporation,
 22 cooperative, association, government subdivision, government
 23 agency, local government, or other organization or entity.

24 (8) ~~the words "public utility" or "utility" mean~~
 25 "Utility" means any person engaged in any aspect of the

1 production, storage, sale, delivery or furnishing of heat,
 2 electricity, gas, or energy in any form for ultimate public
 3 use.

4 (9) ~~"certificate"~~ "Certificate" means the certificate
 5 of environmental compatibility and public need issued by the
 6 board under this chapter ~~and that is~~ required for the
 7 construction or operation of ~~any~~ a facility."

8 Section 4. Section 70-804, R.C.M. 1947, is amended to
 9 read as follows:

10 "70-804. Certificate from board required prior to
 11 construction of ~~utility~~ facility--exceptions. (1) ~~No~~ A
 12 ~~person shall~~ may not commence to construct a ~~utility~~
 13 ~~facility in the state without first having obtained applying~~
 14 for and obtaining a certificate of environmental
 15 compatibility and public need issued with respect to ~~such~~
 16 the facility by the board. ~~Any~~ A facility, with respect to
 17 which a certificate is ~~required~~ issued, shall may not
 18 thereafter be constructed, operated ~~and~~ or maintained
 19 except in conformity with ~~such~~ the certificate and any
 20 terms, conditions and modifications contained therein. A
 21 certificate may only be issued pursuant to this ~~act~~ chapter.

22 (2) A certificate may be transferred, subject to the
 23 approval of the department, to a person who agrees to comply
 24 with the terms, conditions and modifications contained
 25 therein.

1 (3) This ~~act shall~~ chapter does not apply to any
 2 ~~utility a~~ facility over which an agency of the federal
 3 government has exclusive jurisdiction.

4 (4) The board may adopt reasonable rules establishing
 5 exemptions from this chapter for the relocation,
 6 reconstruction, or upgrading of a facility that would
 7 otherwise be covered by this chapter and that is unlikely to
 8 have a significant environmental impact by reason of length,
 9 size, location, available space or right of way, or
 10 construction methods.

11 (5) A certificate is not required under this chapter
 12 for a facility under diligent on site physical construction
 13 or in operation on January 1, 1973."

14 Section 5. Section 70-805, R.C.M. 1947, is amended to
 15 read as follows:

16 "70-805. Surcharge on electric energy producer's
 17 license tax—administrative expenses—tax on gasification,
 18 liquefaction, uranium enrichment facilities. (1) Every
 19 "producer" as defined in chapter 16 of Title 84, ~~the~~
 20 ~~electrical energy producers' license tax,~~ shall, in addition
 21 to the sum required to be paid by that ~~act~~ chapter, pay an
 22 additional twenty-five hundredths percent (0.25%) of the
 23 gross amount as shown on the statement which is required by
 24 that ~~act~~ chapter, in the same manner and within the time
 25 provided by that ~~act~~ chapter. The ~~state board of~~

1 ~~equalization department of revenue~~ shall report to the state
 2 treasurer separately the amount transmitted to the state
 3 treasurer which is added to the electrical energy producers'
 4 license tax by this section ~~of this act~~.

5 (2) The legislature shall appropriate sufficient funds
 6 to finance the department's activities in carrying out its
 7 duties under this ~~act~~ chapter. The legislature shall provide
 8 a tax on gasification, liquefaction, coal conversion, and
 9 uranium enrichment facilities sufficient to produce an
 10 amount of revenue equal to that derived from electrical
 11 energy producers under this section."

12 Section 6. Section 70-806, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-806. Application for certification—~~filing and~~
 15 ~~contents—filing fees—use of filing fees~~ notice of
 16 completion of facility—further fees—~~REPUND~~—proof of
 17 service on municipalities—~~waiver of time requirement~~
 18 amendment of application or certification. (1) (a) ~~At~~
 19 least two (2) years prior to anticipated commencement of
 20 construction of a utility facility as defined in sections
 21 ~~70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (e), and~~
 22 ~~70-803 (3) (d) and at least nine (9) months prior to the~~
 23 ~~anticipated commencement date of the construction of a~~
 24 ~~utility facility as defined in section 70-803 (3) (b) (iii),~~
 25 as ~~An~~ applicant for a certificate shall file with the

1 department as a verified application, in such form as the
 2 ~~department may prescribe~~ board by rule or the department by
 3 order prescribes, containing the following information:

4 ~~(a)~~ (i) a description of the location and of the
 5 ~~utility~~ facility to be built thereon;

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

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

10 ~~(d)~~ (iv) a description of any reasonable alternate
 11 location or locations for the proposed facility, a
 12 description of the comparative merits and detriments of each
 13 location submitted, and a statement of the reasons why the
 14 primary proposed location is best suited for the facility;
 15 and

16 ~~(e)~~ (v) such other information as the applicant may
 17 ~~consider~~ considers relevant or as the ~~board by rule or the~~
 18 ~~department may by regulation or order require~~ requires. A
 19 copy or copies of the studies referred to in clause ~~(b)~~ (iii)
 20 above shall be filed with the department, if ordered, and
 21 shall be available for public inspection.

22 (b) An application may consist of an application for
 23 two (2) or more facilities in combination, such as power
 24 units and transmission lines WHICH ARE PHYSICALLY AND
 25 DIRECTLY ATTACHED TO EACH OTHER AND ARE OPERATIONALLY A

1 SINGLE OPERATING ENTITY.

2 (2) ~~(a) A filing fee shall be deposited in the state~~
 3 ~~general fund. Said fee shall be~~ The applicant shall pay to
 4 the department a filing fee with the application, based
 5 upon the estimated cost of the facility according to the
 6 declining scale which follows: ~~The applicant shall pay the~~
 7 ~~accumulated sum calculated as follows:~~ three percent (3%)
 8 of any estimated cost up to one million dollars
 9 (\$1,000,000); plus one percent (1%) of any estimated cost
 10 over a million dollars and up to twenty million dollars
 11 (\$20,000,000); plus one-half of one percent (0.5%) of any
 12 estimated cost over twenty million dollars (\$20,000,000);
 13 and up to one hundred million dollars (\$100,000,000); plus
 14 one-quarter of one percent (0.25%) of any amount of
 15 estimated cost over one hundred million (\$100,000,000) and
 16 up to three hundred million dollars (\$300,000,000); plus
 17 one-tenth of one percent (0.1%) of any amount of estimated
 18 cost over three hundred million dollars (\$300,000,000). It
 19 is the intent of the legislature that the revenues derived
 20 from the filing fee be used by the department in compiling
 21 the information required for rendering a decision on a
 22 certificate and for carrying out its other responsibilities
 23 under this act. If an application consists of a combination
 24 of two (2) or more facilities, the filing fee shall be the
 25 total of the fees based on the TOTAL estimated cost of each

~~facility considered separately~~ THE COMBINED FACILITIES.

(b) If a certificate is issued by the board for the proposed facility, immediately upon completion of construction of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion, the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is due. If the actual cost exceeds the estimated cost, the applicant shall file a further fee for the difference based upon the declining scale in subsection (2) (a) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500) or less.

(c) IF THE BOARD DENIES AN APPLICATION, AND THE BOARD'S DECISION IS UPHOLD IN ANY SUBSEQUENT COURT PROCEEDING, THE APPLICANT IS ENTITLED TO A REFUND OF THAT PORTION OF THE FILING FEE NOT EXPENDED BY THE DEPARTMENT IN CARRYING OUT ITS RESPONSIBILITIES UNDER THIS CHAPTER.

(d) THE DEPARTMENT MAY CONTRACT WITH A POTENTIAL APPLICANT UNDER THIS CHAPTER, IN ADVANCE OF THE FILING OF A FORMAL APPLICATION, FOR THE DEVELOPMENT OF INFORMATION OR PROVISION OF SERVICES REQUIRED HEREUNDER. PAYMENTS MADE TO THE DEPARTMENT UNDER SUCH A CONTRACT SHALL BE CREDITED AGAINST THE FEE PAYABLE HEREUNDER.

(3) ~~Each~~ An application shall be accompanied by proof of service of a copy of ~~each~~ the 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 ~~each~~ the facility is to be located, both as primarily and as alternatively proposed. The copy of ~~each~~ the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) ~~Each~~ An 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 ~~each~~ those newspapers as will serve substantially to inform ~~each~~ those persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other

1 persons, and file proof thereof, as the department may deem
2 appropriate.

3 (6) An application for an amendment of an application
4 or a certificate shall be in such form and contain such
5 information as the department shall prescribe board by rule
6 or the department by order prescribes. Notice of such an
7 application shall be given as set forth in subsections (3)
8 and (4) of this section. If an amendment to an original
9 application would result in a substantial change of the
10 original application, such an amendment shall be considered
11 as a new application and a new filing fee shall be required.

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

19 ~~(8) The board may, in its discretion, waive the~~
20 ~~necessity of filing an application where utility facilities~~
21 ~~are being relocated pursuant to sections 32-2414 through~~
22 ~~32-2416, R.C.M. 1947, and where it is satisfied after an~~
23 ~~examination of the environmental impact statement filed~~
24 ~~pursuant to chapter 65 of Title 69, R.C.M. 1947, that such~~
25 ~~relocation will not significantly affect the environment."~~

1 Section 7. Section 70-807, R.C.M. 1947, is amended to
2 read as follows:

3 "70-807. Study, evaluation and report on proposed
4 facility ~~hearing on~~ application for amendment of
5 certificate ~~hearings.~~ (1) Upon receipt of an application
6 complying with section 70-806, the department shall commence
7 an intensive study and evaluation of the proposed facility
8 and its effects, ~~pursuant to section 70-816 of this act~~
9 ~~considering all the criteria listed in sections 70-810 and~~
10 ~~70-816.~~ Within ~~six hundred (600) days~~ two (2) years
11 following receipt of the an application for a facility as
12 defined in ~~sections~~ subsections 70-803 (3) (a), 70-803 (b)
13 ~~(iv), 70-803 (3) (e), and 70-803 (3) (d) and for a facility~~
14 as defined in subsections 70-803 (3) (b) and (c) which is
15 more than thirty (30) miles in length, and within one
16 ~~hundred eighty (180) days~~ one (1) year for a facility as
17 defined in ~~sections 70-803 (b) (iii)~~ subsections 70-803 (3)
18 (b) and (c) which is thirty (30) miles or less in length,
19 the department shall make a report to the board, which shall
20 contain the department's studies, evaluations,
21 recommendations, other pertinent documents resulting from
22 its study and evaluation ~~pursuant to section 70-816 of this~~
23 ~~act,~~ and the final environmental impact statement. If the
24 application is for a facility which was not listed or
25 proposed in a long range plan submitted by the applicant to

1 ~~the department at least six (6) months before the filing of~~
 2 ~~the application pursuant to section 70-814, the department~~
 3 ~~shall then have three (3) years and two (2) years,~~
 4 ~~respectively, to make its report to the board.~~ If the
 5 application is for a combination of two (2) or more
 6 facilities, the department shall make its report to the
 7 board within the greater of the lengths of time provided for
 8 in this subsection for either of the facilities.

9 (2) The departments of health and environmental
 10 sciences, highways, intergovernmental relations, fish and
 11 game, and public service regulation shall report to the
 12 department information relating to the impact of the
 13 proposed site on each department's area of expertise. ~~Such~~
 14 ~~information~~ The report may include opinions as to the
 15 advisability of granting, ~~or~~ denying, or modifying the
 16 certificate. The department shall allocate funds obtained
 17 from filing fees to the departments making reports to
 18 reimburse them for the costs of compiling information and
 19 issuing the required report.

20 ~~(2)~~ (3) On an application for an amendment of a
 21 certificate, the board shall hold a hearing in the same
 22 manner as a hearing is held on an application for a
 23 certificate if the proposed change in the facility would
 24 result in any material increase in any environmental impact
 25 of the facility or a substantial change in the location of

1 all or a portion of such the facility other than as provided
 2 in the alternates set forth in the application.

3 ~~(3) (4) Upon receipt of the department's report~~
 4 ~~submitted under subsection (1) of this section, the board~~
 5 ~~shall set a hearing date for a hearing to begin not more~~
 6 ~~than sixty (60) days after such the receipt. WITHIN SIXTY~~
 7 ~~(60) DAYS AFTER RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED~~
 8 ~~UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A~~
 9 ~~DATE FOR THE CERTIFICATION HEARING, WHICH SHALL COMMENCE~~
 10 ~~WITHIN SIX (6) MONTHS AFTER RECEIPT OF THE DEPARTMENT'S~~
 11 ~~REPORT."~~

12 Section 8. Section 70-808, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-808. Parties to certification proceeding—waiver
 15 by failure to participate. (1) The parties to a
 16 certification proceeding include:

- 17 (a) the applicant;
- 18 (b) each municipality and government agency entitled
- 19 to receive service of a copy of the application under
- 20 subsection ~~(3) of section 6 [70-806 (3)] of this act~~ 70-806
 21 (3); and

- 22 (c) any person residing in a municipality entitled to
- 23 receive service of a copy of the application under
- 24 subsection ~~(4) of section 6 [70-806 (4)] of this act~~ 70-806
 25 (4); any nonprofit organization, formed in whole or in part

1 to promote conservation or natural beauty, to protect the
 2 environment, personal health or other biological values, to
 3 preserve historical sites, to promote consumer interests, to
 4 represent commercial and industrial groups, or to promote
 5 the orderly development of the areas in which the facility
 6 is to be located; or any other interested person; and

7 (d) the department.

8 (2) Any party identified in subparagraphs (b) and (c)
 9 of subsection (1) of this section waives his right to be a
 10 party if he does not participate orally at the hearing
 11 before the board."

12 SECTION 9. SECTION 70-809, R.C.M. 1947, IS AMENDED TO
 13 READ AS FOLLOWS:

14 "70-809. Record of hearing — procedure — rules of
 15 evidence — burden of proof. (1) Any studies,
 16 investigations, reports, or other documentary evidence,
 17 including those prepared by the department, which any party
 18 wishes the board to consider or which the board itself
 19 expects to utilize or rely upon, shall be made a part of the
 20 record; a record shall be made of the hearing and of all
 21 testimony taken; and the contested case procedures of the
 22 Montana Administrative Procedure Act [~~82-4201 to 82-4225~~]
 23 (Title 82, chapter 42, R.C.M. 1947) shall apply to the
 24 hearing, except that neither common law nor statutory rules
 25 of evidence need apply, but the board may make rules

1 designed to exclude repetitive, redundant or irrelevant
 2 testimony.

3 (2) In a certification proceeding held under this
 4 chapter, the applicant has the burden of showing by clear
 5 and convincing evidence that the application should be
 6 granted and that the criteria of section 70-810 are met.

7 (3) Any party to a certification proceeding held under
 8 this chapter may conduct prehearing discovery of all other
 9 known parties, including obtaining subpoenas of witnesses
 10 and subpoenas duces tecum for the production of such books,
 11 records, papers, documents and other objects as may be
 12 necessary and proper for the purposes of the proceeding, and
 13 the taking of testimony by deposition upon oral examination
 14 or written interrogatories for the purpose of discovery or
 15 for use as evidence in the hearing or for both purposes.

16 (4) If the board appoints a hearing examiner to
 17 conduct any certification proceedings under this chapter,
 18 the hearing examiner may not be a member of the board or an
 19 employee of the department."

20 Section 10. Section 70-810, R.C.M. 1947, is amended to
 21 read as follows:

22 "70-810. Decision of board—findings necessary for
 23 certificate—conditions imposed—~~service of decision on~~
 24 parties. (1) The ~~within ninety (90) days after the last day~~
 25 of the hearing, the board shall make complete findings,

1 issue an opinion, and render a decision upon the record,
 2 either granting or denying the application as filed, or
 3 granting it upon such terms, conditions, or modifications of
 4 the construction, operation or maintenance of the ~~utility~~
 5 facility as the board ~~may deem~~ considers appropriate. The
 6 board may not grant a certificate either as proposed by the
 7 applicant or as modified by the board unless it shall find
 8 and determine:

- 9 (a) the basis of the need for the facility;
- 10 (b) the nature of the probable environmental impact;
- 11 (c) that the facility represents the minimum adverse
 12 environmental impact, considering the state of available
 13 technology and the nature and economics of the various
 14 alternatives;
- 15 (d) each of the criteria listed in section ~~46 (70-816)~~
 16 ~~of this act 70-816~~;
- 17 (e) in the case of an electric, gas, or liquid
 18 transmission line or aqueduct, what part, if any, of the
 19 line or aqueduct shall be located underground; that ~~such the~~
 20 facility is consistent with regional plans for expansion of
 21 the appropriate grid of the utility systems serving the
 22 state and interconnected utility systems; and that ~~such~~
 23 ~~facilities~~ the facility will serve the interests of utility
 24 system economy and reliability;
- 25 (f) that the location of the facility as proposed

1 conforms to applicable state and local laws and regulations
 2 issued thereunder, except that the board may refuse to apply
 3 any local law or regulation if it finds that, as applied to
 4 the proposed facility, ~~such the~~ law or regulation is
 5 unreasonably restrictive in view of the existing technology,
 6 or of factors of cost or economics, or of the needs of
 7 consumers whether located inside or outside of the directly
 8 affected government subdivisions;

- 9 (g) that the facility will serve the public interest,
 10 convenience and necessity; and
- 11 (h) that duly authorized state and federal air and
 12 water quality agencies have certified that the proposed
 13 facility will not violate state and federally established
 14 standards and implementation plans; the judgments of duly
 15 authorized air and water quality agencies are conclusive on
 16 all questions related to the satisfaction of state and
 17 federal air and water quality standards.
- 18 (2) If the board determines that the location of all
 19 or a part of the proposed facility should be modified, it
 20 may condition its certificate upon such modification,
 21 provided that the municipalities, and persons residing
 22 therein, affected by the modification, ~~shall~~ have been given
 23 reasonable notice of the modification.
- 24 (3) ~~A copy of the decision and any opinion issued with~~
 25 ~~the decision shall be served upon each party. In determining~~

1 that the facility will serve the public interest,
 2 convenience, and necessity under subsection (1) (g) of this
 3 section, the board shall consider:

4 (i) the items listed in subsections (1) (a) through
 5 (b) of this section:

6 (ii) the benefits to the applicant and the state
 7 resulting from the proposed facility;

8 (iii) the effects of the economic activity resulting
 9 from the proposed facility;

10 (iv) the effects of the proposed facility on the
 11 public health, welfare, and safety;

12 (v) any other factors that it considers relevant."

13 Section 11. Section 70-811, R.C.M. 1947, is amended to
 14 read as follows:

15 "70-811. Opinion issued with decision—contents of
 16 certificate—waiver of time requirements—facilities for
 17 which certificate required. (1) In rendering a decision on
 18 an application for a certificate, the board shall issue an
 19 opinion stating its reasons for the action taken. If the
 20 board has found that any regional or local law or
 21 regulation, which would be otherwise applicable, is
 22 unreasonably restrictive pursuant to paragraph (f) of
 23 subsection (1) of section 10 [70-810 (1) (f)] of this act
 24 subsection 70-810 (1) (f), it shall state in its opinion the
 25 reasons therefor.

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

3 (a) An environmental evaluation statement related to
 4 the ~~facilities~~ facility being certified. The statement shall
 5 include, but not be limited to, analysis of the following
 6 information:

7 (i) the environmental impact of the proposed facility;

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

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

12 (iv) alternatives to the proposed ~~facilities~~ facility;
 13 and

14 (v) a plan for monitoring environmental effects of the
 15 proposed facility.

16 (b) A statement signed by the applicant showing
 17 agreement to comply with the requirements of this act
 18 chapter and the conditions of the certificate.

19 (3) ~~The---time---requirement---of---section---6---{70-806}~~
 20 ~~70-806 and any ANY~~ of the provisions described in sections 7
 21 ~~through---11---{70-807---to---70-811}---of---this---act~~ 70-807 through
 22 70-811 may be waived by the board, for good cause shown,
 23 with respect to applications filed before January 1, 1975.
 24 Applications for certificates under this subsection {3} must
 25 be promptly filed. ~~A-certificate-is-not-required-under--this~~

1 ~~act for facilities under construction or in operation on~~
 2 ~~January 1, 1973. However, a certificate must be obtained for~~
 3 ~~associated facilities upon which construction has not~~
 4 ~~commenced before January 1, 1973, subject to the waiver~~
 5 ~~provisions of this subsection.~~

6 (4) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF
 7 PROVISIONS OF SECTIONS 70-807 THROUGH 70-811 IF THE
 8 APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD,
 9 AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE
 10 PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, THAT
 11 AN IMMEDIATE, URGENT NEED FOR A FACILITY EXISTS AND THAT THE
 12 APPLICANT DID NOT HAVE KNOWLEDGE THAT THE NEED FOR THE
 13 FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO FULLY COMPLY
 14 WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811."

15 Section 12. Section 70-812, R.C.M. 1947, is amended to
 16 read as follows:

17 ~~"70-812. Review of denial of certificate by~~
 18 ~~board procedure Judicial review of board decision. (4) Any~~
 19 ~~party as defined in section 9 [70-808] of this act 70-808~~
 20 ~~aggrieved by the final decision of the board on an~~
 21 ~~application for a certificate, may obtain judicial review of~~
 22 ~~that decision by the filing of a petition in a state~~
 23 ~~district court of competent jurisdiction, within thirty (30)~~
 24 ~~days after the issuance of such final decision. Upon receipt~~
 25 ~~of such petition, the department shall deliver to the court~~

1 ~~a copy of the written transcript of the record of the~~
 2 ~~proceeding before it and a copy of the board's decision and~~
 3 ~~opinion entered therein which shall constitute the record on~~
 4 ~~judicial review. A copy of such transcript, decision and~~
 5 ~~opinion shall remain on file with the department and shall~~
 6 ~~be available for public inspection.~~

7 ~~(2) If a decision is issued after a hearing on an~~
 8 ~~application for a certificate, such decision is final for~~
 9 ~~purposes of judicial review. The judicial review procedure~~
 10 ~~shall be the same as that for contested cases under the~~
 11 ~~Montana Administrative Procedure Act [82-4201 to 82-4225]."~~

12 Section 13. Section 70-813, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-813. Jurisdiction of courts restricted. Except as
 15 expressly set forth in sections 42, 47 and 21 [70-812,
 16 70-817 and 70-821] of this act 70-812, 70-817, and 70-821,
 17 ~~no court of this state shall have~~ has jurisdiction to hear
 18 or determine any issue, case or controversy concerning any
 19 matter which was or could have been determined in a
 20 proceeding before the board under this ~~act~~ chapter or to
 21 stop or delay the construction, operation or maintenance of
 22 a ~~utility~~ facility, except to enforce compliance with this
 23 ~~act~~ chapter or the provisions of a certificate issued
 24 hereunder pursuant to sections 49 or 21 [70-819 or 70-821]
 25 ~~of this act 70-819 or 70-821."~~

1 Section ~~14~~. Section 70-814, R.C.M. 1947, is amended to
 2 read as follows:

3 *70-814. Annual long-range plan submitted—
 4 contents—available to public. (1) Each utility, and each
 5 person contemplating the construction of a facility within
 6 this state in the ensuing ten (10) years, shall furnish
 7 annually to the department for its review, a long-range plan
 8 for the construction and operation of ~~utility~~ facilities.
 9 ~~Such~~ The plan shall be submitted on April 1 of each year, ~~and~~
 10 ~~the plan~~ and shall include the following:

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

16 (b) IN THE CASE OF ENERGY PRODUCING FACILITIES a
 17 description of efforts by the utility or person to
 18 coordinate the plan with other utilities or persons so as to
 19 provide a coordinated regional plan for meeting the ~~utility~~
 20 ~~facilities~~ ENERGY needs of the region;

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

1 (d) projections of the demand for the service rendered
 2 by the utility or person and explanation of the basis for
 3 ~~each~~ those projections, and a description of the manner and
 4 extent to which the proposed facilities will meet the
 5 projected demand; and

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

10 (2) The plan shall be made available to the public by
 11 the department, and the utility or person shall ~~be required~~
 12 ~~to~~ give public notice throughout the state of its plan by
 13 filing the plan with the environmental quality council, the
 14 department of health and environmental ~~science~~ sciences, the
 15 department of highways, the department of public service
 16 regulation, the department of state lands and the department
 17 of intergovernmental relations. Citizen environmental
 18 protection and resource planning groups, and other
 19 interested persons may obtain a plan by written request and
 20 payment therefor to the department."

21 Section 15. Section 70-815, R.C.M. 1947, is amended to
 22 read as follows:

23 *70-815. Study of planned facilities included in
 24 annual long-range report. If a utility or person lists and
 25 identifies a proposed ~~utility~~ facility in its plan,

1 submitted pursuant to section ~~14 [70-814]~~ of this act
 2 70-814, as one on which construction is proposed to be
 3 commenced within the five (5) year period ~~next proceeding~~
 4 following submission of the plan, the department shall
 5 commence examination and evaluation of the proposed site to
 6 determine whether construction of the proposed facility
 7 would unduly impair the environmental values in section ~~16~~
 8 ~~[70-816]~~ of this act 70-816. This study may be continued
 9 until such time as a ~~utility~~ person files an application for
 10 a certificate under section ~~6 [70-806]~~ of this act 70-806.
 11 Information gathered under this section may be used to
 12 support findings and recommendations required for issuance
 13 of a certificate."

14 Section 16. Section 70-816, R.C.M. 1947, is amended to
 15 read as follows:

16 "70-816. Environmental factors considered in
 17 evaluating long-range plans. In evaluating long-range plans,
 18 conducting five-year site reviews, and evaluating
 19 applications for certificates ~~of site and facility~~, the
 20 board and department shall give consideration to the
 21 following list of environmental factors and may, by
 22 regulation rule, add to the categories of this section:

- 23 (1) Energy needs.
- 24 (a) Growth in demand and projections of need.
- 25 (b) Availability and desirability of alternative

1 sources of energy.

2 (c) Availability and desirability of alternative
 3 sources of energy in lieu of the proposed facility.

4 (d) Promotional activities of the utility which may
 5 have given rise to the need for this facility.

6 (e) Socially beneficial uses of the output of this
 7 facility, including its uses to protect or enhance
 8 environmental quality.

9 (f) Conservation activities which could reduce the
 10 need for more energy.

11 (g) Research activities of the utility of new
 12 technology available to it which might minimize
 13 environmental impact.

14 (2) Land use impacts.

15 (a) Area of land required and ultimate use.

16 (b) Consistency with areawide state and regional land
 17 use plans.

18 (c) Consistency with existing and projected nearby
 19 land use.

20 (d) Alternative uses of the site.

21 (e) Impact on population already in the area;
 22 population attracted by construction or operation of the
 23 facility itself; impact of availability of energy from this
 24 facility on growth patterns and population dispersal.

25 (f) Geologic suitability of the site or route.

- 1 (g) Seismologic characteristics.
- 2 (h) Construction practices.
- 3 (i) Extent of erosion, scouring, wasting of land—both
- 4 at site and as a result of fossil fuel demands of the
- 5 facility.
- 6 (j) Corridor design and construction precautions for
- 7 transmission lines or aqueducts.
- 8 (k) Scenic impacts.
- 9 (l) Effects on natural systems, wildlife, plant life.
- 10 (m) Impacts on important historic architectural,
- 11 archeological, and cultural areas and features.
- 12 (n) Extent of recreation opportunities and related
- 13 compatible uses.
- 14 (o) Public recreation plan for the project.
- 15 (p) Public facilities and accommodation.
- 16 (q) Opportunities for joint use with energy intensive
- 17 industries, or other activities to utilize the waste heat
- 18 from facilities.
- 19 (3) Water resources impacts.
- 20 (a) Hydrologic studies of adequacy of water supply and
- 21 impact of facility on stream flow, lakes and reservoirs.
- 22 (b) Hydrologic studies of impact of facilities on
- 23 ground water.
- 24 (c) Cooling system evaluation including consideration
- 25 of alternatives.

- 1 (d) Inventory of effluents including physical,
- 2 chemical, biological, and radiological characteristics.
- 3 (e) Hydrologic studies of effects of effluents on
- 4 receiving waters, including mixing characteristics of
- 5 receiving waters, changed evaporation due to temperature
- 6 differentials, and effect of discharge on bottom sediments.
- 7 (f) Relationship to water quality standards.
- 8 (g) Effects of changes in quantity and quality on
- 9 water use by others, including both withdrawal and in situ
- 10 uses; relationship to projected uses; relationship to water
- 11 rights.
- 12 (h) Effects on plant and animal life, including algae,
- 13 macroinvertebrates, and fish population.
- 14 (i) Effects on unique or otherwise significant
- 15 ecosystems; e.g., wetlands.
- 16 (j) Monitoring programs.
- 17 (4) Air quality impacts.
- 18 (a) Meteorology. Wind direction and velocity, ambient
- 19 temperature ranges, precipitation values, inversion
- 20 occurrence, other effects on dispersion.
- 21 (b) Topography. Factors affecting dispersion.
- 22 (c) Standards in effect and projected for emissions,
- 23 design capability to meet standards.
- 24 (d) Emissions and controls.
- 25 (i) Stack design.

- 1 (ii) Particulates.
- 2 (iii) Sulfur Oxides.
- 3 (iv) Oxides of Nitrogen.
- 4 (v) Heavy metals, trace elements, radioactive
- 5 materials and other toxic substances.
- 6 (e) Relationship to present and projected air quality
- 7 of the area.
- 8 (f) Monitoring program.
- 9 (5) Solid wastes impact.
- 10 (a) Solid waste inventory.
- 11 (b) Disposal program.
- 12 (c) Relationship of disposal practices to
- 13 environmental quality criteria.
- 14 (d) Capacity of disposal sites to accept projected
- 15 waste loadings.
- 16 (6) Radiation impacts.
- 17 (a) Land use controls over development and population.
- 18 (b) Wastes and associated disposal program for solid,
- 19 liquid, radioactive and gaseous wastes.
- 20 (c) Analyses and studies of the adequacy of
- 21 engineering safeguards and operating procedures.
- 22 (d) Monitoring. Adequacy of devices and sampling
- 23 techniques.
- 24 (7) Noise impacts.
- 25 (a) Construction period levels.

- 1 (b) Operational levels.
- 2 (c) Relationship of present and projected noise levels
- 3 to existing and potential stricter noise standards.
- 4 (d) Monitoring. Adequacy of devices and methods."
- 5 Section 17. Section 70-817, R.C.M. 1947, is amended to
- 6 read as follows:
- 7 "70-817. Additional requirements by other governmental
- 8 agencies not permitted after issuance of certificate—
- 9 exceptions. Notwithstanding any other ~~provisions of~~ law, no
- 10 state or regional agency, or municipality or other local
- 11 government, may require any approval, consent, permit,
- 12 certificate, or other condition for the construction,
- 13 operation, or maintenance of a ~~utility~~ facility authorized
- 14 by a certificate issued pursuant to ~~the provisions of this~~
- 15 ~~act chapter~~; except that the state air and water quality
- 16 agency or agencies shall retain authority which they have or
- 17 may be granted to determine compliance of the proposed
- 18 facility with state and federal standards and implementation
- 19 plans for air and water quality and to enforce those
- 20 standards. ~~Nothing in this act shall~~ This chapter does not
- 21 prevent the application of state laws for the protection of
- 22 employees engaged in the construction, operation or
- 23 maintenance of ~~such a~~ facility."
- 24 Section 18. Section 70-818, R.C.M. 1947, is amended to
- 25 read as follows:

1 "70-818. Revocation or suspension of certificate--
 2 voiding of application. (1) A certificate may be revoked
 3 or suspended by the board:

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

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

10 (3) (c) for violation of ~~the provisions~~ any provision
 11 of this act chapter, the ~~regulations~~ rules issued
 12 thereunder, or orders of the board or department.

13 (2) An application may be voided by the department:

14 (a) for any material AND KNOWINGLY false statement in
 15 the application or in accompanying statements or studies
 16 required of the applicant;

17 (b) for failure to file an application in
 18 substantially the form and content required by this chapter
 19 and the rules adopted thereunder; or

20 (c) for failure to deposit the filing fee with the
 21 application as required by section 70-806."

22 Section 19. Section 70-819, R.C.M. 1947, is amended to
 23 read as follows:

24 "70-819. Enforcement of ~~act~~ chapter by residents of
 25 state--statement of failure to enforce act--mandamus

1 —private suits for damages. (1) A resident of this state,
 2 with knowledge that a requirement of this ~~act~~ chapter or a
 3 rule adopted ~~under this act~~, under it is not being enforced
 4 by a public officer or employee whose duty it is to enforce
 5 the requirement or rule, may bring the failure to enforce to
 6 the attention of the public officer or employee by a written
 7 statement under oath that shall state the specific facts of
 8 the failure to enforce the requirement or rule. Knowingly
 9 making false statements or charges in the affidavit subjects
 10 the affiant to penalties prescribed under the law of
 11 perjury.

12 (2) If the public officer or employee neglects or
 13 refuses for an unreasonable time after receipt of the
 14 statement to enforce the requirement or rule, the resident
 15 may bring an action of mandamus in the district court of the
 16 first judicial district of this state, in and for the county
 17 of Lewis and Clark. If the court finds that a requirement of
 18 this act chapter or a rule adopted ~~under this act~~ under it
 19 is not being enforced, the court may order the public
 20 officer or employee, whose duty it is to enforce the
 21 requirement or rule, to perform his duties. If he fails to
 22 do so, the public officer or employee shall be held in
 23 contempt of court and is subject to the penalties provided
 24 by law.

25 (3) An owner of an interest in real property who

1 obtains all or part of his supply of water for domestic,
 2 agricultural, industrial, or other legitimate use from a
 3 surface or underground source may sue a utility person to
 4 recover damages for contamination, diminution, or
 5 interruption of the water supply, proximately resulting from
 6 the operation of a utility facility. The remedies
 7 enumerated in this subsection do not exclude the use of any
 8 other remedy which may be available under the laws of the
 9 state."

10 Section 20. Section 70-820, R.C.M. 1947, is amended to
 11 read as follows:

12 "70-820. Adoption of rules—monitoring of facilities.

13 (1) The board ~~and department~~ may adopt rules implementing
 14 the provisions of this ~~act~~ chapter, including, but not
 15 limited to, rules:

- 16 (a) governing the form and content of applications;
- 17 (b) further defining the terms used in this chapter;
- 18 (c) governing the form and content of long-range
 19 plans;

20 ~~(d) designed to reduce the rate of growth of energy~~
 21 ~~demands by limiting promotional activities by energy~~
 22 ~~suppliers;~~

23 ~~(e)(D) any other rules the board considers necessary~~
 24 ~~to accomplish the purposes and objectives of this chapter.~~

25 (2) The board and the department shall ~~have continuing~~

1 ~~authority and responsibility for monitoring~~ monitor the
 2 operations of all certificated facilities, for assuring
 3 continuing compliance with this ~~act~~ chapter and certificates
 4 issued hereunder, and for discovering and preventing
 5 noncompliance with this ~~act~~ chapter and ~~such the~~
 6 certificates.

7 (3) The board shall adopt rules requiring every person
 8 who proposes to gather geological data by boring of test
 9 holes or other underground exploration, investigation, or
 10 experimentation, related to the possible future development
 11 of ~~an underground utility~~ a facility employing geothermal
 12 resources, to comply with the following requirements:

- 13 (a) Notify the department of the proposed action;
- 14 (b) Submit to the department a description of the area
 15 involved;
- 16 (c) Submit to the department a statement of the
 17 proposed activities to be conducted and the methods to be
 18 utilized;
- 19 (d) Submit to the department geological data reports
 20 at such times as may be required by the rules; and
- 21 (e) Submit such other information as the board may
 22 require in the rules."

23 Section 21. Section 70-621, R.C.M. 1947, is amended to
 24 read as follows:

25 "70-621. Penalties for violation of ~~act~~ chapter—civil

1 action by attorney general. (1) Whoever
 2 (a) without first obtaining a certificate ~~of site and~~
 3 ~~facility~~ required under section 4 ~~[70-804]~~ 70-804, commences
 4 to construct or operate a ~~utility~~ facility ~~after the~~
 5 ~~effective date of this act~~; or
 6 (b) having first obtained a certificate ~~of site and~~
 7 ~~facility~~, constructs, operates or maintains a ~~utility~~
 8 facility other than in compliance with the certificate; or
 9 (c) violates any other provision of this chapter or
 10 any rule or order adopted thereunder, or KNOWINGLY submits
 11 false information in any report or application required by
 12 this chapter or rule or order adopted thereunder; or
 13 ~~(d)~~ (d) causes any of the aforementioned acts to
 14 occur; shall be liable to a civil penalty of not more than
 15 ten thousand dollars (\$10,000) for each violation. Each day
 16 of a continuing violation shall constitute a separate
 17 offense. The penalty shall be recoverable in a civil suit
 18 brought by the attorney general on behalf of the state in
 19 the first district court of Montana.
 20 (2) Whoever knowingly and willfully violates
 21 subsection (1) shall be fined not more than ten thousand
 22 dollars (\$10,000) for each violation or imprisoned for not
 23 more than one (1) year, or both. Each day of a continuing
 24 violation shall constitute a separate offense.
 25 (3) In addition to any penalty provided in subsections

1 (1) or (2), whenever the department determines that a person
 2 is violating or is about to violate any of the provisions of
 3 this section, it shall may refer the matter to the attorney
 4 general who may bring a civil action on behalf of the state
 5 in the first district court of Montana for injunctive or
 6 other appropriate relief against the violation and to
 7 enforce ~~the act~~ this chapter or a certificate issued
 8 hereunder, and upon a proper showing a permanent or
 9 preliminary injunction or temporary restraining order shall
 10 be granted without bond. The department shall also enforce
 11 this chapter and bring legal actions to accomplish the
 12 enforcement through its own legal counsel.
 13 (4) All fines collected shall be deposited in the
 14 state general fund."
 15 Section 22. Section 70-822, R.C.M. 1947, is amended to
 16 read as follows:
 17 "70-822. Grants, gifts and funds. The department ~~shall~~
 18 ~~have authority to~~ may receive grants, gifts and other funds
 19 from any public or private source, to assist in its
 20 activities under this ~~act~~ chapter."
 21 Section 23. Section 70-823, R.C.M. 1947, is amended to
 22 read as follows:
 23 "70-823. ~~act~~ Chapter supersedes other laws or
 24 regulations. This ~~act~~ chapter supersedes other laws or
 25 regulations. If any provision of this ~~act~~ chapter is in

1 conflict with any other law of this state, or any rule or
 2 regulation promulgated thereunder, this ~~act~~ chapter shall
 3 govern and control, and ~~each~~ the other law, rule or
 4 regulation shall be deemed superseded for the purpose of
 5 this ~~act~~ chapter."

6 Section 24. Amendments not indicative of legislative
 7 interpretation of 1973 act—savings clause. The amendments
 8 made by this act, or proposed to be made if this act should
 9 not be enacted, do not indicate an expression of legislative
 10 intent as to the interpretation of any provision of the
 11 Montana Utility Siting Act of 1973 as it existed prior to
 12 the introduction or enactment of this act. This act shall
 13 not affect the outcome of any judicial or quasi-judicial
 14 administrative proceeding commenced prior to the effective
 15 date of this act.

16 Section 25. Applicability. The amendments made by
 17 this act apply only to applications received by the
 18 department after January 1, 1975. PERSONS REQUIRED TO FILE
 19 LONG-RANGE PLANS UNDER THE AMENDMENTS MADE BY SECTION 14 OF
 20 THIS ACT TO SECTION 70-814, R.C.M. 1947, SHALL HAVE UNTIL
 21 JUNE 1, 1975, TO FILE SUCH PLANS.

22 Section 26. This act is effective on its passage and
 23 approval.

-End-

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS OF HOUSE BILL NO. 581

That House Bill No. 581, third reading, be amended as follows:

1. Amend page 8, line 2, section 3.
Following: "gas,"
Insert: "hydrocarbon products"
2. Amend page 8, section 3, line 7.
Following: line 7
Insert: "(10) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued."

Amend Senate Committee on Natural Resources and Fish and Game, dated March 25, 1975, as follows:

3. Amend amendment No. 14, insertion paragraph, line 4.
Following: "the receipt"
Insert: "; except for those hearings involving applications submitted for facilities as defined in section 70-803(3)(b) and (3)(c), 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"

And Amend House Bill 581, third reading, as follows:

4. Amend page 18, section 8, lines 22 through line 6 on page 19.
Following: "(c)"
Strike: Sub-section (c) in its entirety
Insert: "any person who can demonstrate to the satisfaction of a majority of the board prior to the commencement of the proceeding that such person would be directly affected by the construction or operation of the proposed facility."
5. Amend page 23, section 10, line 12.
Following: line 12
Insert: "(4) Considerations of need, public need, or public convenience and necessity, and demonstration thereof by the applicant, shall apply only to utility facilities."
6. Amend page 29, section 16, lines 21 and 22.
Following: "factors"
Strike: "and may, by rule, add to the categories of this section"

1 HOUSE BILL NO. 581
 2 INTRODUCED BY BARDANOUVE, MELOY, HUENNEKENS, REMMIS, VINCENT,
 3 LIEN, DRISCOLL, GUNDEBSON, HARPER, BRADLEY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 6 70-801 THROUGH ~~70-808, 70-810 THROUGH~~ 70-823, R.C.M. 1947,
 7 TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 70-801, R.C.M. 1947, is amended to
 12 read as follows:

13 "70-801. Short title. This ~~act~~ chapter shall be known
 14 and may be cited as the Montana Utility MAJOR FACILITY
 15 Siting Act of 1973."

16 Section 2. Section 70-802, R.C.M. 1947, is amended to
 17 read as follows:

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

1 The legislature finds that the construction of
 2 additional power ~~and or~~ energy conversion facilities may be
 3 necessary to meet the increasing need for electricity, ~~and~~
 4 ~~other~~ energy, and other products, and that ~~such these~~
 5 facilities have an effect on the environment, an impact on
 6 population concentration, and an effect on the welfare of
 7 the citizens of this state. Therefore, it is necessary to
 8 ensure that the location, construction and operation of
 9 power and energy conversion facilities will produce minimal
 10 adverse effects on the environment and upon the citizens of
 11 this state by providing that ~~no~~ a power or energy conversion
 12 facility ~~shall hereafter~~ may not be constructed or operated
 13 within this state without a certificate of environmental
 14 compatibility and public need acquired pursuant to this ~~act~~
 15 chapter."

16 Section 3. Section 70-803, R.C.M. 1947, is amended to
 17 read as follows:

18 "70-803. Definitions. ~~The following words, when used~~
 19 ~~in this act, shall have the following meanings unless~~
 20 ~~otherwise clearly apparent from the context in this chapter,~~
 21 unless the context requires otherwise:

22 (1) ~~the word "department"~~ "Department" means the
 23 department of natural resources and conservation provided
 24 for in Title 82A, chapter 15.

25 (2) ~~the word "board"~~ "Board" means the board of

1 natural resources and conservation provided for in section
 2 82A-1509.

3 (3) ~~the words "utility facility" or "facility" mean~~
 4 "Facility" means:

5 (a) ~~any energy generating and conversion each plant,~~
 6 unit, or other facility and associated facilities, except
 7 for oil and gas refineries.

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

14 (ii) designed for, or capable of, producing ~~one~~
 15 ~~hundred million (100,000,000)~~ twenty-five million
 16 (25,000,000) cubic feet of gas per day or more, or any
 17 addition thereto having an estimated cost in excess of two
 18 hundred fifty thousand dollars (\$250,000), or

19 (iii) designed for, or capable of, producing ~~fifty~~
 20 ~~thousand (50,000)~~ twenty-five thousand (25,000) barrels of
 21 liquid hydrocarbon products per day or more, or any addition
 22 thereto having an estimated cost in excess of two hundred
 23 fifty thousand dollars (\$250,000), or

24 (iv) designed for, or capable of, enriching uranium
 25 minerals, or any addition thereto having an estimated cost

1 in excess of two hundred fifty thousand dollars (\$250,000),
 2 or

3 (v) designed for, or capable of, utilizing, refining,
 4 processing, or converting five hundred thousand (500,000)
 5 tons of coal per year or more, or any addition thereto
 6 having an estimated cost in excess of two hundred fifty
 7 thousand dollars (\$250,000):

8 (b) ~~as each~~ electric transmission line and associated
 9 facilities of a design capacity of ~~thirty-four and one-half~~
 10 ~~(34.5)~~ more than sixty-nine (69) kilovolts or more, except
 11 that ~~the following transmission lines and associated~~
 12 ~~facilities shall be subject to certain exceptions under the~~
 13 ~~act:~~

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

19 ~~(ii) a transmission line and associated facilities with~~
 20 ~~a design capacity of one hundred sixty one (161) kilovolts~~
 21 ~~or less and which will be constructed underground for a~~
 22 ~~distance of five (5) miles or less shall not be considered a~~
 23 ~~utility facility within the definitions of this act,~~

24 ~~(iii) a transmission line or associated facilities of a~~
 25 ~~design capacity of one hundred sixty one (161) kilovolts or~~

1 ~~less which does not meet the requirements of subsections (i)~~
 2 ~~and (ii) of this subsection shall be subject to the specific~~
 3 ~~time review requirements for transmission lines in section~~
 4 ~~6, subsection (1) [70-806 (1)] and section 7, subsection (1)~~
 5 ~~[70-807 (1)] of this act if the proposed length of the~~
 6 ~~transmission line will not exceed thirty (30) miles,~~

7 ~~(iv) unless specifically covered by subsections (i),~~
 8 ~~(ii) or (iii) of this subsection, the construction of all~~
 9 ~~transmission lines and associated facilities shall be~~
 10 ~~subject to the two (2) year time requirement of section 6,~~
 11 ~~subsection (1) [70-806 (1)], and the six hundred (600) day~~
 12 ~~requirement of section 7, subsection (1) [70-807 (1)],~~

13 ~~(v) the provisions of subsections (i) and (ii) of this~~
 14 ~~subsection shall not be construed as authorizing the~~
 15 ~~simultaneous construction of two (2) or more transmission~~
 16 ~~lines serving the same community or customer which would,~~
 17 ~~when constructed separately, come within the exceptions of~~
 18 ~~subsections (i) and (ii); the term does not include an~~
 19 ~~electric transmission line and associated facilities of a~~
 20 ~~design capacity of less than two hundred thirty (230)~~
 21 ~~kilovolts OR LESS and ten (10) miles or less in length;~~

22 (c) ~~a gas or liquid transmission line each pipeline~~
 23 and associated facilities designed for, or capable of,
 24 transporting gas, water, or liquid hydrocarbon products
 25 from or to a gasification or liquefaction facility located

1 within or without this state of the size indicated in
 2 ~~subsections (a) (ii) and (a) (iii)~~ subsection (3) (a) of
 3 this section;

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

7 (e) any underground in situ gasification of coal.

8 (4) ~~the words "associated~~ "Associated facilities"
 9 include, but are not limited to, transportation links of any
 10 kind, aqueducts, diversion dams, TRANSMISSION substations,
 11 including distribution substations, storage ponds,
 12 reservoirs, and any other device or equipment associated
 13 with the production, or delivery of the energy form or
 14 product produced by a facility, except that the term does
 15 not include a facility.

16 (5) ~~the words "commence~~ "Commence to construct" mean
 17 means:

18 (a) any clearing of land, excavation, construction, or
 19 other action that would affect the environment of the site
 20 or route of a ~~utility~~ facility, but do does not include mean
 21 changes needed for temporary use of sites or routes for
 22 nonutility purposes, or uses in securing geological data,
 23 including necessary borings to ascertain foundation
 24 conditions. ~~The words do include the commencement of~~
 25 ~~eminent domain proceedings under Title 93, chapter 99,~~

1 ~~R.C.M. 1947, for land or rights of way upon which a utility~~
 2 ~~facility may be constructed.;~~

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

10 (c) the commencement of eminent domain proceedings
 11 under Title 93, chapter 99, for land or rights of way upon
 12 or over which a facility may be constructed;

13 (d) the relocation or upgrading of an existing
 14 facility defined by subsection (3) (b) or (c), including
 15 upgrading to a design capacity covered by subsection (3)
 16 (b), except that the term does not include normal
 17 maintenance or repair of an existing facility.

18 (6) ~~the word "municipality"~~ "Municipality" means any
 19 county or municipality within this state.

20 (7) ~~the word "person" includes~~ "Person" means any
 21 individual, group, firm, partnership, corporation,
 22 cooperative, association, government subdivision, government
 23 agency, local government, or other organization or entity.

24 (8) ~~the words "public utility" or "utility" mean~~
 25 "Utility" means any person engaged in any aspect of the

1 production, storage, sale, delivery or furnishing of heat,
 2 electricity, gas, HYDROCARBON PRODUCTS or energy in any form
 3 for ultimate public use.

4 (9) ~~"certificate"~~ "Certificate" means the certificate
 5 of environmental compatibility and public need issued by the
 6 board under this chapter and that is required for the
 7 construction or operation of ~~any~~ a facility.

8 (10) "ADDITION THERETO" MEANS THE INSTALLATION OF NEW
 9 MACHINERY AND EQUIPMENT WHICH WOULD SIGNIFICANTLY CHANGE THE
 10 CONDITIONS UNDER WHICH THE CERTIFICATE WAS ISSUED."

11 Section 4. Section 70-804, R.C.M. 1947, is amended to
 12 read as follows:

13 "70-804. Certificate from board required prior to
 14 construction of ~~utility~~ facility. ~~exemptions.~~ (1) ~~No~~ A
 15 person ~~shall~~ may not commence to construct a ~~utility~~
 16 facility in the state without first having obtained applying
 17 for and obtaining a certificate of environmental
 18 compatibility and public need issued with respect to such
 19 the facility by the board. Any A facility, with respect to
 20 which a certificate is ~~required~~ issued, shall may not
 21 thereafter be constructed, operated ~~and~~ or maintained
 22 except in conformity with such the certificate and any
 23 terms, conditions and modifications contained therein. A
 24 certificate may only be issued pursuant to this act ~~act~~ chapter.

25 (2) A certificate may be transferred, subject to the

1 approval of the department, to a person who agrees to comply
 2 with the terms, conditions and modifications contained
 3 therein.

4 (3) This ~~act shall~~ chapter does not apply to any
 5 utility a facility over which an agency of the federal
 6 government has exclusive jurisdiction.

7 (4) The board may adopt reasonable rules establishing
 8 exemptions from this chapter for the relocation,
 9 reconstruction, or upgrading of a facility that would
 10 otherwise be covered by this chapter and that is unlikely to
 11 have a significant environmental impact by reason of length,
 12 size, location, available space or right of way, or
 13 construction methods.

14 (5) A certificate is not required under this chapter
 15 for a facility under diligent on site physical construction
 16 or in operation on January 1, 1973."

17 Section 5. Section 70-805, R.C.M. 1947, is amended to
 18 read as follows:

19 "70-805. Surcharge on electric energy producer's
 20 license tax—administrative expenses—tax on gasification,
 21 liquefaction, uranium enrichment facilities. (1) Every
 22 "producer" as defined in chapter 16 of Title 84, ~~the~~
 23 ~~electrical energy producers' license tax,~~ shall, in addition
 24 to the sum required to be paid by that ~~act~~ chapter, pay an
 25 additional twenty-five hundredths percent (0.25%) of the

1 gross amount as shown on the statement which is required by
 2 that ~~act~~ chapter, in the same manner and within the time
 3 provided by that ~~act~~ chapter. The ~~state board of~~
 4 ~~equalization department of revenue~~ shall report to the state
 5 treasurer separately the amount transmitted to the state
 6 treasurer which is added to the electrical energy producers'
 7 license tax by this section ~~of this act~~.

8 (2) The legislature shall appropriate sufficient funds
 9 to finance the department's activities in carrying out its
 10 duties under this ~~act~~ chapter. The legislature shall provide
 11 a tax on gasification, liquefaction, coal conversion, and
 12 uranium enrichment facilities sufficient to produce an
 13 amount of revenue equal to that derived from electrical
 14 energy producers under this section."

15 Section 6. Section 70-806, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-806. Application for certification—filing and
 18 contents—filing fees ~~use of filing fees~~ notice of
 19 completion of facility—further fees—REFUND—proof of
 20 service on municipalities ~~waiver of time requirement~~
 21 amendment of application or certification. (1) (a) ~~At~~
 22 ~~least two (2) years prior to anticipated commencement of~~
 23 ~~construction of a utility facility as defined in sections~~
 24 ~~70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (e), and~~
 25 ~~70-803 (3) (d) and at least nine (9) months prior to the~~

1 ~~anticipated commencement date of the construction of a~~
 2 ~~utility facility as defined in section 70-803 (3) (b) (iii),~~
 3 ~~an~~ An applicant for a certificate shall file with the
 4 department ~~an~~ a verified application, in such form as the
 5 department ~~may prescribe~~ board by rule or the department by
 6 order prescribes, containing the following information:

7 ~~(a)~~ (i) a description of the location and of the
 8 ~~utility~~ facility to be built thereon;

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

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

13 ~~(d)~~ (iv) a description of any reasonable alternate
 14 location or locations for the proposed facility, a
 15 description of the comparative merits and detriments of each
 16 location submitted, and a statement of the reasons why the
 17 primary proposed location is best suited for the facility;
 18 and

19 ~~(e)~~ (v) such other information as the applicant ~~may~~
 20 ~~consider~~ considers relevant or as the ~~board by rule or the~~
 21 department ~~may~~ by regulation or order require requires. A
 22 copy or copies of the studies referred to in clause ~~(b)~~ (ii)
 23 above shall be filed with the department, if ordered, and
 24 shall be available for public inspection.

25 (b) An application may consist of an application for

1 ~~two (2) or more facilities in combination, such as power~~
 2 ~~units and transmission lines WHICH ARE PHYSICALLY AND~~
 3 ~~DIRECTLY ATTACHED TO EACH OTHER AND ARE OPERATIONALLY A~~
 4 ~~SINGLE OPERATING ENTITY.~~

5 (2) ~~(a) A filing fee shall be deposited in the state~~
 6 ~~general fund. Said fee shall be~~ The applicant shall pay to
 7 the department a filing fee with the application, based
 8 upon the estimated cost of the facility according to the
 9 declining scale which follows: ~~The applicant shall pay the~~
 10 ~~accumulated sum calculated as follows: three percent (3%)~~
 11 TWO PERCENT (2%) of any estimated cost up to one million
 12 dollars (\$1,000,000); plus one percent (1%) of any estimated
 13 cost over a million dollars and up to twenty million dollars
 14 (\$20,000,000); plus one-half of one percent (0.5%) of any
 15 estimated cost over twenty million dollars (\$20,000,000);
 16 and up to one hundred million dollars (\$100,000,000); plus
 17 one-quarter of one percent (0.25%) of any amount of
 18 estimated cost over one hundred million (\$100,000,000) and
 19 up to three hundred million dollars (\$300,000,000); plus
 20 ~~one-tenth of one percent (0.1%)~~ ONE-EIGHTH OF ONE PERCENT
 21 (.125%) of any amount of estimated cost over three hundred
 22 million dollars (\$300,000,000). ~~It is the intent of the~~
 23 ~~legislature that the~~ THE revenues derived from the filing
 24 fee SHALL be used by the department in compiling the
 25 information required for rendering a decision on a

1 certificate and for carrying out its other responsibilities
 2 under this act WITH RESPECT TO THE FACILITY COVERED BY THE
 3 CERTIFICATE FOR A PERIOD NOT TO EXCEED FIVE (5) YEARS AFTER
 4 THE CERTIFICATE IS ISSUED FOR FACILITIES DEFINED IN 70-803
 5 (3) (B) AND (C) OR NOT TO EXCEED TEN (10) YEARS AFTER THE
 6 CERTIFICATE IS ISSUED FOR FACILITIES DEFINED IN 70-803 (3)
 7 (A), (D), AND (E). If an application consists of a
 8 combination of two (2) or more facilities, the filing fee
 9 shall be the total of the fees based on the TOTAL estimated
 10 cost of each facility considered separately THE COMBINED
 11 FACILITIES.

12 ~~(b) If a certificate is issued by the board for the~~
 13 ~~proposed facility, immediately upon completion of~~
 14 ~~construction of the facility the applicant shall give a~~
 15 ~~notice of completion to the department. As soon as possible~~
 16 ~~after giving the notice of completion, the applicant shall~~
 17 ~~file an affidavit with the department stating the actual~~
 18 ~~cost of the facility in such detail as the department may~~
 19 ~~require to determine whether a further fee is due. If the~~
 20 ~~actual cost exceeds the estimated cost, the applicant shall~~
 21 ~~file a further fee for the difference based upon the~~
 22 ~~declining scale in subsection (2) (a) of this section. No~~
 23 ~~further fee is required, however, if it is computed to be~~
 24 ~~five hundred dollars (\$500) or less.~~

25 ~~(c) (b) IF THE BOARD DENIES AN APPLICATION, AND THE~~

1 ~~BOARD'S DECISION IS UPHOLD IN ANY SUBSEQUENT COURT~~
 2 ~~PROCEEDING, THE APPLICANT IS ENTITLED TO AN ACCOUNTING OF~~
 3 ~~MONEYS EXPENDED AND TO A REFUND OF THAT PORTION OF THE~~
 4 ~~FILING FEE NOT EXPENDED BY THE DEPARTMENT IN CARRYING OUT~~
 5 ~~ITS RESPONSIBILITIES UNDER THIS CHAPTER.~~

6 ~~(d) (c) THE DEPARTMENT MAY CONTRACT WITH A POTENTIAL~~
 7 ~~APPLICANT UNDER THIS CHAPTER, IN ADVANCE OF THE FILING OF A~~
 8 ~~FORMAL APPLICATION, FOR THE DEVELOPMENT OF INFORMATION OR~~
 9 ~~PROVISION OF SERVICES REQUIRED HEREUNDER. PAYMENTS MADE TO~~
 10 ~~THE DEPARTMENT UNDER SUCH A CONTRACT SHALL BE CREDITED~~
 11 ~~AGAINST THE FEE PAYABLE HEREUNDER.~~

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

21 (4) Each An application shall also be accompanied by
 22 proof that public notice thereof was given to persons,
 23 residing in the municipalities entitled to receive notice
 24 under subsection (3) of this section, by the publication of
 25 a summary of the application, and the date on or about which

1 it is to be filed, in ~~such~~ those newspapers as will serve
 2 substantially to inform ~~such~~ those persons of the
 3 application.

4 (5) Inadvertent failure of service on, or notice to,
 5 any of the municipalities, government agencies or persons
 6 identified in subsections (3) and (4) of this section may be
 7 cured pursuant to orders of the department designed to
 8 afford them adequate notice to enable their effective
 9 participation in the proceeding. In addition, the department
 10 may, after filing, require the applicant to serve notice of
 11 the application or copies thereof or both upon such other
 12 persons, and file proof thereof, as the department may deem
 13 appropriate.

14 (6) An application for an amendment of an application
 15 or a certificate shall be in such form and contain such
 16 information as the department shall prescribe board by rule
 17 or the department by order prescribes. Notice of such an
 18 application shall be given as set forth in subsections (3)
 19 and (4) of this section. If an amendment to an original
 20 application would result in a substantial change of the
 21 original application, such an amendment shall be considered
 22 as a new application and a new filing fee shall be required.

23 ~~(7) The board may waive compliance with the time limit~~
 24 ~~of this section if an applicant makes a clear and convincing~~
 25 ~~showing that an immediate need for a facility exists and~~

1 ~~that the applicant did not have knowledge that the need~~
 2 ~~existed sufficiently in advance of the need to file an~~
 3 ~~application within the time provided in subsection (1) of~~
 4 ~~this section.~~

5 ~~(8) The board may, in its discretion, waive the~~
 6 ~~necessity of filing an application where utility facilities~~
 7 ~~are being relocated pursuant to sections 32-2414 through~~
 8 ~~32-2416, R.C.M. 1947, and where it is satisfied after an~~
 9 ~~examination of the environmental impact statement filed~~
 10 ~~pursuant to chapter 65 of Title 69, R.C.M. 1947, that such~~
 11 ~~relocation will not significantly affect the environment."~~

12 Section 7. Section 70-807, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-807. Study, evaluation and report on proposed
 15 facility hearing on application for amendment of
 16 certificate hearings. (1) Upon receipt of an application
 17 complying with section 70-806, the department shall commence
 18 an intensive study and evaluation of the proposed facility
 19 and its effects, ~~pursuant to section 70-816 of this act~~
 20 considering all the criteria listed in sections 70-810 and
 21 70-816. Within ~~six hundred (600) days~~ two (2) years
 22 following receipt of the an application for a facility as
 23 defined in ~~sections subsections~~ subsections 70-803 (2) (a), 70-803 (b)
 24 (iv), 70-803 (3) (c), and 70-803 (3) (d) and for a facility
 25 as defined in subsections 70-803 (3) (b) and (c) which is

1 ~~more than thirty (30) miles in length, and within one~~
 2 ~~hundred eighty (180) days one (1) year~~ for a facility as
 3 defined in ~~sections 70-803 (b) (iii) subsections 70-803 (3)~~
 4 ~~(b) and (c) which is thirty (30) miles or less in length,~~
 5 the department shall make a report to the board, which shall
 6 contain the department's studies, evaluations,
 7 recommendations, other pertinent documents resulting from
 8 its study and evaluation pursuant to ~~section 70-816 of this~~
 9 ~~act, and the final environmental impact statement. If the~~
 10 ~~application is for a facility which was not listed or~~
 11 ~~proposed in a long range plan submitted by the applicant to~~
 12 ~~the department at least six (6) months before the filing of~~
 13 ~~the application pursuant to section 70-814, the department~~
 14 ~~shall then have three (3) years and two (2) years,~~
 15 ~~respectively, to make its report to the board. If the~~
 16 ~~application is for a combination of two (2) or more~~
 17 ~~facilities, the department shall make its report to the~~
 18 ~~board within the greater of the lengths of time provided for~~
 19 ~~in this subsection for either of the facilities.~~

20 (2) The departments of health and environmental
 21 sciences, highways, intergovernmental relations, fish and
 22 game, and public service regulation shall report to the
 23 department information relating to the impact of the
 24 proposed site on each department's area of expertise. Such
 25 information The report may include opinions as to the

1 advisability of granting, ~~or~~ denying, or modifying the
 2 certificate. The department shall allocate funds obtained
 3 from filing fees to the departments making reports to
 4 reimburse them for the costs of compiling information and
 5 issuing the required report.

6 ~~(2) (3)~~ On an application for an amendment of a
 7 certificate, the board shall hold a hearing in the same
 8 manner as a hearing is held on an application for a
 9 certificate if the proposed change in the facility would
 10 result in any material increase in any environmental impact
 11 of the facility or a substantial change in the location of
 12 all or a portion of ~~such the~~ facility other than as provided
 13 in the alternates set forth in the application.

14 ~~(3) (4)~~ Upon receipt of the department's report
 15 submitted under subsection (1) of this section, the board
 16 shall set a hearing date for a hearing to begin not more
 17 than sixty (60) days after such the receipt. ~~WITHIN SIXTY~~
 18 ~~(60) DAYS AFTER RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED~~
 19 ~~UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A~~
 20 ~~DATE FOR THE CERTIFICATION HEARING, WHICH SHALL COMMENCE~~
 21 ~~WITHIN SIX (6) MONTHS AFTER RECEIPT OF THE DEPARTMENT'S~~
 22 ~~REPORT. UPON RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED~~
 23 ~~UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A~~
 24 ~~DATE FOR A HEARING TO BEGIN NOT MORE THAN SIXTY (60) DAYS~~
 25 ~~AFTER THE RECEIPT; UPON RECEIPT OF THE DEPARTMENT'S REPORT~~

1 SUBMITTED UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD
 2 SHALL SET A DATE FOR A HEARING TO BEGIN NOT MORE THAN ONE
 3 HUNDRED TWENTY (120) DAYS AFTER THE RECEIPT; EXCEPT FOR
 4 THOSE HEARINGS INVOLVING APPLICATIONS SUBMITTED FOR
 5 FACILITIES AS DEFINED IN SECTION 70-803(3) (B) AND (3) (C).
 6 CERTIFICATION HEARINGS SHALL BE CONDUCTED BY THE BOARD IN
 7 THE COUNTY SEAT OF LEWIS AND CLARK COUNTY OR THE COUNTY IN
 8 WHICH THE FACILITY, OR THE GREATER PORTION THEREOF, IS TO BE
 9 LOCATED.

10 Section 8. Section 70-808, R.C.M. 1947, is amended to
 11 read as follows:

12 "70-808. Parties to certification proceeding—waiver
 13 by failure to participate. (1) The parties to a
 14 certification proceeding include:

- 15 (a) the applicant;
- 16 (b) each municipality and government agency entitled
 17 to receive service of a copy of the application under
 18 subsection ~~(3) of section 6 [70-806 (3)] of this act~~ 70-806
 19 (3); and
- 20 (c) ~~any person residing in a municipality entitled to~~
 21 ~~receive service of a copy of the application under~~
 22 ~~subsection (4) of section 6 [70-806 (4)] of this act~~ 70-806
 23 (4); any nonprofit organization, formed in whole or in part
 24 to promote conservation or natural beauty, to protect the
 25 environment, personal health or other biological values, to

1 ~~preserve historical sites, to promote consumer interests, to~~
 2 ~~represent commercial and industrial groups, or to promote~~
 3 ~~the orderly development of the areas in which the facility~~
 4 ~~is to be located; or any other interested person; and ANY~~
 5 ~~PERSON WHO CAN DEMONSTRATE TO THE SATISFACTION OF A MAJORITY~~
 6 ~~OF THE BOARD PRIOR TO THE COMMENCEMENT OF THE PROCEEDING~~
 7 ~~THAT SUCH PERSON WOULD BE DIRECTLY AFFECTED BY THE~~
 8 ~~CONSTRUCTION OR OPERATION OF THE PROPOSED FACILITY. ANY~~
 9 ~~PERSON RESIDING IN A MUNICIPALITY ENTITLED TO RECEIVE~~
 10 ~~SERVICE OF A COPY OF THE APPLICATION UNDER SUBSECTION (4) OF~~
 11 ~~SECTION 6 [70-806 (4)] OF THIS ACT 70-806(4); ANY NONPROFIT~~
 12 ~~ORGANIZATION, FORMED IN WHOLE OR IN PART TO PROMOTE~~
 13 ~~CONSERVATION OR NATURAL BEAUTY, TO PROTECT THE ENVIRONMENT,~~
 14 ~~PERSONAL HEALTH OR OTHER BIOLOGICAL VALUES, TO PRESERVE~~
 15 ~~HISTORICAL SITES, TO PROMOTE CONSUMER INTERESTS, TO~~
 16 ~~REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS, OR TO PROMOTE~~
 17 ~~THE ORDERLY DEVELOPMENT OF THE AREAS IN WHICH THE FACILITY~~
 18 ~~IS TO BE LOCATED; OR ANY OTHER INTERESTED PERSON; AND~~

- 19 (d) the department.
- 20 (2) Any party identified in subparagraphs (b) and (c)
 21 of subsection (1) of this section waives his right to be a
 22 party if he does not participate orally at the hearing
 23 before the board."

24 SECTION 9. SECTION 70-809, R.C.M. 1947, IS AMENDED TO
 25 READ AS FOLLOWS:

1 *70-809. Record of hearing -- procedure -- rules of
 2 evidence -- burden of proof. (1) Any studies,
 3 investigations, reports, or other documentary evidence,
 4 including those prepared by the department, which any party
 5 wishes the board to consider or which the board itself
 6 expects to utilize or rely upon, shall be made a part of the
 7 record; a record shall be made of the hearing and of all
 8 testimony taken; and the contested case procedures of the
 9 Montana Administrative Procedure Act [~~82-4201 to 82-4225~~
 10 (Title 82, Chapter 42, R.C.M. 1947) shall apply to the
 11 hearing, except that neither common law nor statutory rules
 12 of evidence need apply, but the board may make rules
 13 designed to exclude repetitive, redundant or irrelevant
 14 testimony.

15 (2) In a certification proceeding held under this
 16 chapter, the applicant has the burden of showing by clear
 17 and convincing evidence that the application should be
 18 granted and that the criteria of section 70-810 are met.

19 ~~(3) Any party to a certification proceeding held under~~
 20 ~~this chapter may conduct prehearing discovery of all other~~
 21 ~~known parties, including obtaining subpoenas of witnesses~~
 22 ~~and subpoenas duces tecum for the production of such books,~~
 23 ~~records, papers, documents and other objects as may be~~
 24 ~~necessary and proper for the purposes of the proceeding, and~~
 25 ~~the taking of testimony by deposition upon oral examination~~

1 ~~or written interrogatories for the purpose of discovery or~~
 2 ~~for use as evidence in the hearing or for both purposes.~~

3 ~~(4) (3) If the board appoints a hearing examiner to~~
 4 ~~conduct any certification proceedings under this chapter,~~
 5 ~~the hearing examiner may not be a member of the board or an~~
 6 ~~employee of the department."~~

7 Section 10. Section 70-810, R.C.M. 1947, is amended to
 8 read as follows:

9 *70-810. Decision of board--findings necessary for
 10 certificate--conditions imposed--service of decision on
 11 parties. (1) The Within ninety (90) days after the last day
 12 of the hearing, the board shall make complete findings,
 13 issue an opinion, and render a decision upon the record,
 14 either granting or denying the application as filed, or
 15 granting it upon such terms, conditions, or modifications of
 16 the construction, operation or maintenance of the utility
 17 facility as the board may deem considers appropriate. The
 18 board may not grant a certificate either as proposed by the
 19 applicant or as modified by the board unless it shall find
 20 and determine:

- 21 (a) the basis of the need for the facility;
- 22 (b) the nature of the probable environmental impact;
- 23 (c) that the facility represents the minimum adverse
- 24 environmental impact, considering the state of available
- 25 technology and the nature and economics of the various

1 alternatives;

2 (d) each of the criteria listed in section ~~46 [70-816]~~
 3 ~~of this act 70-816~~;

4 (e) in the case of an electric, gas, or liquid
 5 transmission line or aqueduct, what part, if any, of the
 6 line or aqueduct shall be located underground; that ~~such~~ the
 7 facility is consistent with regional plans for expansion of
 8 the appropriate grid of the utility systems serving the
 9 state and interconnected utility systems; and that ~~such~~
 10 facilities the facility will serve the interests of utility
 11 system economy and reliability;

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

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

23 (h) that duly authorized state ~~and federal~~ air and
 24 water quality agencies have certified that the proposed
 25 facility will not violate state and federally established

1 standards and implementation plans; the judgments of duly
 2 authorized air and water quality agencies are conclusive on
 3 all questions related to the satisfaction of state and
 4 federal air and water quality standards.

5 (2) If the board determines that the location of all
 6 or a part of the proposed facility should be modified, it
 7 may condition its certificate upon such modification,
 8 provided that the municipalities, and persons residing
 9 therein, affected by the modification, ~~shall~~ have been given
 10 reasonable notice of the modification.

11 (3) ~~a copy of the decision and any opinion issued with~~
 12 ~~the decision shall be served upon each party. In determining~~
 13 that the facility will serve the public interest,
 14 convenience, and necessity under subsection (1) (g) of this
 15 section, the board shall consider:

16 (i) the items listed in subsections (1) (a) through
 17 (b) of this section;

18 (ii) the benefits to the applicant and the state
 19 resulting from the proposed facility;

20 (iii) the effects of the economic activity resulting
 21 from the proposed facility;

22 (iv) the effects of the proposed facility on the
 23 public health, welfare, and safety;

24 (v) any other factors that it considers relevant.

25 (4) CONSIDERATIONS OF NEED, PUBLIC NEED, OF PUBLIC

1 CONVENIENCE AND NECESSITY, AND DEMONSTRATION THEREOF BY THE
 2 APPLICANT, SHALL APPLY ONLY TO UTILITY FACILITIES."

3 Section 11. Section 70-811, R.C.M. 1947, is amended to
 4 read as follows:

5 "70-811. Opinion issued with decision—contents of
 6 certificate—waiver of time requirements—facilities for
 7 which certificate required. (1) In rendering a decision on
 8 an application for a certificate, the board shall issue an
 9 opinion stating its reasons for the action taken. If the
 10 board has found that any regional or local law or
 11 regulation, which would be otherwise applicable, is
 12 unreasonably restrictive pursuant to ~~paragraph (f) of~~
 13 ~~subsection (1) of section 10 [70-810 (1) (f)] of this act~~
 14 subsection 70-810 (1) (f), it shall state in its opinion the
 15 reasons therefor.

16 (2) Any certificate issued by the board shall include
 17 the following:

18 (a) An environmental evaluation statement related to
 19 the facilities facility being certified. The statement shall
 20 include, but not be limited to, analysis of the following
 21 information:

- 22 (i) the environmental impact of the proposed facility;
- 23 (ii) any adverse environmental effects which cannot be
- 24 avoided by issuance of the certificate;
- 25 (iii) problems and objections raised by other federal

1 and state agencies and interested groups;

2 (iv) alternatives to the proposed ~~facilities facility~~;
 3 and

4 (v) a plan for monitoring environmental effects of the
 5 proposed facility.

6 (b) A statement signed by the applicant showing
 7 agreement to comply with the requirements of this act
 8 chapter and the conditions of the certificate.

9 ~~(3) The time requirement of section 6 [70-806] 70-806~~
 10 ~~and any ANY of the provisions described in sections 7~~
 11 ~~through 11 [70-807 to 70-811] of this act 70-807 through~~
 12 70-811 may be waived by the board, for good cause shown,
 13 with respect to applications filed before January 1, 1975.
 14 Applications for certificates under this subsection ~~(3)~~ must
 15 be promptly filed. ~~A certificate is not required under this~~
 16 ~~act for facilities under construction or in operation on~~
 17 ~~January 1, 1973. However, a certificate must be obtained for~~
 18 ~~associated facilities upon which construction has not~~
 19 ~~commenced before January 1, 1973, subject to the waiver~~
 20 ~~provisions of this subsection.~~

21 (4) (A) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF
 22 THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811 IF THE
 23 APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD,
 24 AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE
 25 PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AT A

1 PUBLIC HEARING THAT AN IMMEDIATE, URGENT NEED FOR A FACILITY
2 EXISTS AND THAT THE APPLICANT DID NOT HAVE KNOWLEDGE THAT
3 THE NEED FOR THE FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO
4 FULLY COMPLY WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH
5 70-811.

6 (B) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF THE
7 PROVISIONS OF THIS CHAPTER UPON RECEIPT OF NOTICE BY A
8 UTILITY OR PERSON SUBJECT TO THIS CHAPTER THAT A FACILITY OR
9 ASSOCIATED FACILITY HAS BEEN DAMAGED OR DESTROYED AS A
10 RESULT OF FIRE, FLOOD OR OTHER NATURAL DISASTER OR AS THE
11 RESULT OF INSURRECTION, WAR OR OTHER CIVIL DISORDER, AND
12 THERE EXISTS AN IMMEDIATE NEED FOR CONSTRUCTION OF A NEW
13 FACILITY OR ASSOCIATED FACILITY OR THE RELOCATION OF A
14 PREVIOUSLY EXISTING FACILITY OR ASSOCIATED FACILITY IN ORDER
15 TO PROMOTE THE PUBLIC WELFARE."

16 Section 12. Section 70-812, R.C.M. 1947, is amended to
17 read as follows:

18 "70-812. ~~Review of denial of certificate by~~
19 ~~board procedure~~ Judicial review of board decision. (4) Any
20 party as defined in section 8 [70-808] of this act 70-808
21 aggrieved by the final decision of the board on an
22 application for a certificate, may obtain judicial review of
23 that decision by the filing of a petition in a state
24 district court of competent jurisdiction, ~~within thirty (30)~~
25 ~~days after the issuance of such final decision. Upon receipt~~

1 ~~of such petition, the department shall deliver to the court~~
2 ~~a copy of the written transcript of the record of the~~
3 ~~proceeding before it and a copy of the board's decision and~~
4 ~~opinion entered therein which shall constitute the record on~~
5 ~~judicial review. A copy of such transcript, decision and~~
6 ~~opinion shall remain on file with the department and shall~~
7 ~~be available for public inspection.~~

8 ~~(2) If a decision is issued after a hearing on an~~
9 ~~application for a certificate, such decision is final for~~
10 ~~purposes of judicial review. The judicial review procedure~~
11 ~~shall be the same as that for contested cases under the~~
12 ~~Montana Administrative Procedure Act [82-4201 to 82-4225]."~~

13 Section 13. Section 70-813, R.C.M. 1947, is amended to
14 read as follows:

15 "70-813. Jurisdiction of courts restricted. Except as
16 expressly set forth in sections ~~42, 17 and 21~~ [70-812,
17 ~~70-817 and 70-821~~] of this act 70-812, 70-817, and 70-821,
18 no court of this state shall ~~have~~ has jurisdiction to hear
19 or determine any issue, case or controversy concerning any
20 matter which was or could have been determined in a
21 proceeding before the board under this act chapter or to
22 stop or delay the construction, operation or maintenance of
23 a utility facility, except to enforce compliance with this
24 act chapter or the provisions of a certificate issued
25 hereunder pursuant to sections ~~49 or 21~~ [70-819 or 70-821]

1 ~~of this act 70-819 or 70-821."~~

2 Section 14. Section 70-814, R.C.M. 1947, is amended to
3 read as follows:

4 "70-814. Annual long-range plan submitted—
5 contents—available to public. (1) Each utility, and each
6 person contemplating the construction of a facility within
7 this state in the ensuing ten (10) years, shall furnish
8 annually to the department for its review, a long-range plan
9 for the construction and operation of ~~utility~~ facilities.
10 ~~Such~~ The plan shall be submitted on April 1 of each year, ~~and~~
11 ~~The plan and~~ shall include the following:

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

17 (b) IN THE CASE OF ENERGY-PRODUCING UTILITY FACILITIES
18 a description of efforts by the utility or person to
19 coordinate the plan with other utilities or persons so as to
20 provide a coordinated regional plan for meeting the ~~utility~~
21 ~~facilities~~ ENERGY needs of the region;

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

1 stage in the planning process;

2 (d) projections of the demand for the service rendered
3 by the utility or person and explanation of the basis for
4 ~~such~~ those projections, and a description of the manner and
5 extent to which the proposed facilities will meet the
6 projected demand; and

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

11 (2) The plan shall be made available to the public by
12 the department, and the utility or person shall ~~be required~~
13 ~~to~~ give public notice throughout the state of its plan by
14 filing the plan with the environmental quality council, the
15 department of health and environmental ~~science~~ sciences, the
16 department of highways, the department of public service
17 regulation, the department of state lands and the department
18 of intergovernmental relations. Citizen environmental
19 protection and resource planning groups, and other
20 interested persons may obtain a plan by written request and
21 payment therefor to the department."

22 Section 15. Section 70-815, R.C.M. 1947, is amended to
23 read as follows:

24 "70-815. Study of planned facilities included in
25 annual long-range report. If a utility or person lists and

1 identifies a proposed ~~utility~~ facility in its plan,
 2 submitted pursuant to section ~~44 [70-814] of this act~~
 3 70-814, as one on which construction is proposed to be
 4 commenced within the five (5) year period ~~next proceeding~~
 5 following submission of the plan, the department shall
 6 commence examination and evaluation of the proposed site to
 7 determine whether construction of the proposed facility
 8 would unduly impair the environmental values in section ~~46~~
 9 ~~[70-816] of this act~~ 70-816. This study may be continued
 10 until such time as a utility person files an application for
 11 a certificate under section ~~6 [70-806] of this act~~ 70-806.
 12 Information gathered under this section may be used to
 13 support findings and recommendations required for issuance
 14 of a certificate."

15 Section 16. Section 70-816, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-816. Environmental factors considered in
 18 evaluating long-range plans. In evaluating long-range plans,
 19 conducting five-year site reviews, and evaluating
 20 applications for certificates ~~of site and facility~~, the
 21 board and department shall give consideration to the
 22 following list of environmental factors ~~and may, by~~
 23 ~~regulation rule, add to the categories of this section~~ AND
 24 MAY, BY REGULATION RULE, ADD TO THE CATEGORIES OF THIS
 25 SECTION:

- 1 (1) Energy needs.
- 2 (a) Growth in demand and projections of need.
- 3 (b) Availability and desirability of alternative
- 4 sources of energy.
- 5 (c) Availability and desirability of alternative
- 6 sources of energy in lieu of the proposed facility.
- 7 (d) Promotional activities of the utility which may
- 8 have given rise to the need for this facility.
- 9 (e) Socially beneficial uses of the output of this
- 10 facility, including its uses to protect or enhance
- 11 environmental quality.
- 12 (f) Conservation activities which could reduce the
- 13 need for more energy.
- 14 (g) Research activities of the utility of new
- 15 technology available to it which might minimize
- 16 environmental impact.
- 17 (2) Land use impacts.
- 18 (a) Area of land required and ultimate use.
- 19 (b) Consistency with areawide state and regional land
- 20 use plans.
- 21 (c) Consistency with existing and projected nearby
- 22 land use.
- 23 (d) Alternative uses of the site.
- 24 (e) Impact on population already in the area;
- 25 population attracted by construction or operation of the

1 facility itself; impact of availability of energy from this
 2 facility on growth patterns and population dispersal.

3 (f) Geologic suitability of the site or route.

4 (g) Seismologic characteristics.

5 (h) Construction practices.

6 (i) Extent of erosion, scouring, wasting of land—both
 7 at site and as a result of fossil fuel demands of the
 8 facility.

9 (j) Corridor design and construction precautions for
 10 transmission lines or aqueducts.

11 (k) Scenic impacts.

12 (l) Effects on natural systems, wildlife, plant life.

13 (m) Impacts on important historic architectural,
 14 archeological, and cultural areas and features.

15 (n) Extent of recreation opportunities and related
 16 compatible uses.

17 (o) Public recreation plan for the project.

18 (p) Public facilities and accommodation.

19 (q) Opportunities for joint use with energy intensive
 20 industries, or other activities to utilize the waste heat
 21 from facilities.

22 (3) Water resources impacts.

23 (a) Hydrologic studies of adequacy of water supply and
 24 impact of facility on stream flow, lakes and reservoirs.

25 (b) Hydrologic studies of impact of facilities on

1 ground water.

2 (c) Cooling system evaluation including consideration
 3 of alternatives.

4 (d) Inventory of effluents including physical,
 5 chemical, biological, and radiological characteristics.

6 (e) Hydrologic studies of effects of effluents on
 7 receiving waters, including mixing characteristics of
 8 receiving waters, changed evaporation due to temperature
 9 differentials, and effect of discharge on bottom sediments.

10 (f) Relationship to water quality standards.

11 (g) Effects of changes in quantity and quality on
 12 water use by others, including both withdrawal and in situ
 13 uses; relationship to projected uses; relationship to water
 14 rights.

15 (h) Effects on plant and animal life, including algae,
 16 macroinvertebrates, and fish population.

17 (i) Effects on unique or otherwise significant
 18 ecosystems; e.g., wetlands.

19 (j) Monitoring programs.

20 (4) Air quality impacts.

21 (a) Meteorology. Wind direction and velocity, ambient
 22 temperature ranges, precipitation values, inversion
 23 occurrence, other effects on dispersion.

24 (b) Topography. Factors affecting dispersion.

25 (c) Standards in effect and projected for emissions,

1 design capability to meet standards.

2 (d) Emissions and controls.

3 (i) Stack design.

4 (ii) Particulates.

5 (iii) Sulfur Oxides.

6 (iv) Oxides of Nitrogen.

7 (v) Heavy metals, trace elements, radioactive

8 materials and other toxic substances.

9 (e) Relationship to present and projected air quality

10 of the area.

11 (f) Monitoring program.

12 (5) Solid wastes impact.

13 (a) Solid waste inventory.

14 (b) Disposal program.

15 (c) Relationship of disposal practices to

16 environmental quality criteria.

17 (d) Capacity of disposal sites to accept projected

18 waste loadings.

19 (6) Radiation impacts.

20 (a) Land use controls over development and population.

21 (b) Wastes and associated disposal program for solid,

22 liquid, radioactive and gaseous wastes.

23 (c) Analyses and studies of the adequacy of

24 engineering safeguards and operating procedures.

25 (d) Monitoring. Adequacy of devices and sampling

1 techniques.

2 (7) Noise impacts.

3 (a) Construction period levels.

4 (b) Operational levels.

5 (c) Relationship of present and projected noise levels

6 to existing and potential stricter noise standards.

7 (d) Monitoring. Adequacy of devices and methods."

8 Section 17. Section 70-817, R.C.M. 1947, is amended to

9 read as follows:

10 "70-817. Additional requirements by other governmental

11 agencies not permitted after issuance of certificate—

12 exceptions. Notwithstanding any other ~~provision of~~ law, no

13 state or regional agency, or municipality or other local

14 government, may require any approval, consent, permit,

15 certificate, or other condition for the construction,

16 operation, or maintenance of a ~~utility~~ facility authorized

17 by a certificate issued pursuant to ~~the provisions of this~~

18 ~~act Chapter~~; except that the state air and water quality

19 agency or agencies shall retain authority which they have or

20 may be granted to determine compliance of the proposed

21 facility with state and federal standards and implementation

22 plans for air and water quality and to enforce those

23 standards. ~~Nothing in this act shall~~ This Chapter does not

24 prevent the application of state laws for the protection of

25 employees engaged in the construction, operation or

1 maintenance of ~~each~~ a facility."

2 Section ~~18~~. Section 70-818, R.C.M. 1947, is amended to
3 read as follows:

4 "70-818. Revocation or suspension of certificate ~~or~~
5 ~~voiding of application.~~ (1) A certificate may be revoked
6 or suspended by the board:

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

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

13 (3) ~~(c)~~ (c) for violation of ~~the provisions~~ any provision
14 of this ~~act~~ chapter, the ~~regulations~~ rules issued
15 thereunder, or orders of the board or department.

16 (2) All application may be voided by the department:

17 (a) for any material AND KNOWINGLY false statement in
18 the application or in accompanying statements or studies
19 required of the applicant;

20 (b) for failure to file an application in
21 substantially the form and content required by this chapter
22 and the rules adopted thereunder; or

23 (c) for failure to deposit the filing fee with the
24 application as required by section 70-806."

25 Section 19. Section 70-819, R.C.M. 1947, is amended to

1 read as follows:

2 "70-819. Enforcement of ~~act~~ chapter by residents of
3 state—~~statement~~ of failure to enforce ~~act~~—~~mandamus~~
4 —~~private suits for damages.~~ (1) A resident of this state,
5 with knowledge that a requirement of this ~~act~~ chapter or a
6 rule adopted ~~under this act,~~ under it is not being enforced
7 by a public officer or employee whose duty it is to enforce
8 the requirement or rule, may bring the failure to enforce to
9 the attention of the public officer or employee by a written
10 statement under oath that shall state the specific facts of
11 the failure to enforce the requirement or rule. Knowingly
12 making false statements or charges in the affidavit subjects
13 the affiant to penalties prescribed under the law of
14 perjury.

15 (2) If the public officer or employee neglects or
16 refuses for an unreasonable time after receipt of the
17 statement to enforce the requirement or rule, the resident
18 may bring an action of mandamus in the district court of the
19 first judicial district of this state, in and for the county
20 of Lewis and Clark. If the court finds that a requirement of
21 this ~~act~~ chapter or a rule adopted ~~under this act~~ under it
22 is not being enforced, the court may order the public
23 officer or employee, whose duty it is to enforce the
24 requirement or rule, to perform his duties. If he fails to
25 do so, the public officer or employee shall be held in

1 contempt of court and is subject to the penalties provided
2 by law.

3 (3) An owner of an interest in real property who
4 obtains all or part of his supply of water for domestic,
5 agricultural, industrial, or other legitimate use from a
6 surface or underground source may sue a ~~utility person~~ to
7 recover damages for contamination, diminution, or
8 interruption of the water supply, proximately resulting from
9 the operation of a ~~utility~~ facility. The remedies
10 enumerated in this subsection do not exclude the use of any
11 other remedy which may be available under the laws of the
12 state."

13 Section 20. Section 70-820, R.C.M. 1947, is amended to
14 read as follows:

15 "70-820. Adoption of rules—monitoring of facilities.

16 (1) The board ~~and department~~ may adopt rules implementing
17 the provisions of this ~~act~~ chapter, including, but not
18 limited to, rules:

- 19 (a) governing the form and content of applications;
- 20 (b) further defining the terms used in this chapter;
- 21 (c) governing the form and content of long-range
22 plans;
- 23 ~~(d) designed to reduce the rate of growth of energy~~
24 ~~demands by limiting promotional activities by energy~~
25 ~~suppliers;~~

1 ~~(e)(D) any other rules the board considers necessary~~
2 ~~to accomplish the purposes and objectives of this chapter.~~

3 (2) The board and the department shall ~~have continuing~~
4 ~~authority and responsibility for monitoring~~ monitor the
5 operations of all certificated facilities, for assuring
6 continuing compliance with this ~~act~~ chapter and certificates
7 issued hereunder, and for discovering and preventing
8 noncompliance with this ~~act~~ chapter and ~~see~~ the
9 certificates.

10 (3) The board shall adopt rules requiring every person
11 who proposes to gather geological data by boring of test
12 holes or other underground exploration, investigation, or
13 experimentation, related to the possible future development
14 of an ~~underground utility~~ a facility employing geothermal
15 resources, to comply with the following requirements:

- 16 (a) Notify the department of the proposed action;
- 17 (b) Submit to the department a description of the area
18 involved;
- 19 (c) Submit to the department a statement of the
20 proposed activities to be conducted and the methods to be
21 utilized;
- 22 (d) Submit to the department geological data reports
23 at such times as may be required by the rules; and
- 24 (e) Submit such other information as the board may
25 require in the rules."

1 Section 21. Section 70-821, R.C.M. 1947, is amended to
2 read as follows:

3 "70-821. Penalties for violation of ~~act~~ chapter—civil
4 action by attorney general. (1) Whoever

5 (a) without first obtaining a certificate ~~of site and~~
6 ~~facility~~ required under section 4 ~~[70-804]~~ 70-604, OR A
7 WAIVER THEREOF UNDER SECTION 70-811 (4) (E) commences to
8 construct or operate a ~~utility~~ facility ~~after the effective~~
9 ~~date of this act~~; or

10 (b) having first obtained a certificate ~~of site and~~
11 ~~facility~~, constructs, operates or maintains a ~~utility~~
12 facility other than in compliance with the certificate; or

13 (c) violates any other provision of this chapter or
14 any rule or order adopted thereunder, or KNOWINGLY submits
15 false information in any report or application required by
16 this chapter or rule or order adopted thereunder; or

17 ~~(e)~~ (d) causes any of the aforementioned acts to
18 occur; shall be liable to a civil penalty of not more than
19 ten thousand dollars (\$10,000) for each violation. Each day
20 of a continuing violation shall constitute a separate
21 offense. The penalty shall be recoverable in a civil suit
22 brought by the attorney general on behalf of the state in
23 the first district court of Montana.

24 (2) Whoever knowingly and willfully violates
25 subsection (1) shall be fined not more than ten thousand

1 dollars (\$10,000) for each violation or imprisoned for not
2 more than one (1) year, or both. Each day of a continuing
3 violation shall constitute a separate offense.

4 (3) In addition to any penalty provided in subsections
5 (1) or (2), whenever the department determines that a person
6 is violating or is about to violate any of the provisions of
7 this section, it ~~shall~~ may refer the matter to the attorney
8 general who ~~may~~ bring a civil action on behalf of the state
9 in the first district court of Montana for injunctive or
10 other appropriate relief against the violation and to
11 enforce ~~the act~~ this chapter or a certificate issued
12 hereunder, and upon a proper showing a permanent or
13 preliminary injunction or temporary restraining order shall
14 be granted without bond. The department shall also enforce
15 this chapter and bring legal actions to accomplish the
16 enforcement through its own legal counsel.

17 (4) All fines collected shall be deposited in the
18 state general fund."

19 Section 22. Section 70-822, R.C.M. 1947, is amended to
20 read as follows:

21 "70-822. Grants, gifts and funds. The department ~~shall~~
22 ~~have authority to~~ may receive grants, gifts and other funds
23 from any public or private source, to assist in its
24 activities under this ~~act~~ chapter."

25 Section 23. Section 70-823, R.C.M. 1947, is amended to

1 read as follows:

2 "70-823. ~~Act~~ Chapter supersedes other laws or
 3 regulations. This ~~act~~ chapter supersedes other laws or
 4 regulations. If any provision of this ~~act~~ chapter is in
 5 conflict with any other law of this state, or any rule or
 6 regulation promulgated thereunder, this ~~act~~ chapter shall
 7 govern and control, and ~~each~~ the other law, rule or
 8 regulation shall be deemed superseded for the purpose of
 9 this ~~act~~ chapter."

10 Section 24. Amendments not indicative of legislative
 11 interpretation of 1973 act—savings clause. The amendments
 12 made by this act, or proposed to be made if this act should
 13 not be enacted, do not indicate an expression of legislative
 14 intent as to the interpretation of any provision of the
 15 Montana Utility Siting Act of 1973 as it existed prior to
 16 the introduction or enactment of this act. This act shall
 17 not affect the outcome of any judicial or quasi-judicial
 18 administrative proceeding commenced prior to the effective
 19 date of this act.

20 Section 25. Applicability. The amendments made by
 21 this act apply only to applications received by the
 22 department after January 1, 1975. PERSONS REQUIRED TO FILE
 23 LONG-RANGE PLANS UNDER THE AMENDMENTS MADE BY SECTION 14 OF
 24 THIS ACT TO SECTION 70-914, R.C.M. 1947, SHALL HAVE UNTIL
 25 JUNE 1, 1975, TO FILE SUCH PLANS.

1 Section 26. This act is effective on its passage and
 2 approval.

-End-