

1 H BILL NO. 593
 2 INTRODUCED BY Courcy Mark
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 5 MAJOR FACILITY SITING ACT BY REDUCING THE TIME PERIODS AND
 6 ORGANIZING THE STUDY, REVIEW, AND RECOMMENDATIONS RELATING
 7 TO APPLICATIONS FOR A CERTIFICATE OF ENVIRONMENTAL
 8 COMPATIBILITY AND PUBLIC NEED; BY PROVIDING FOR HEARING
 9 PROCEDURES AND REVIEW OF LONG-RANGE REPORTS; AND PROVIDING
 10 AN EFFECTIVE DATE; AMENDING SECTIONS 70-806, 70-807, 70-808,
 11 70-809, 70-810, AND 70-815, R.C.M. 1947."
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 70-806, R.C.M. 1947, is amended to
 15 read as follows:
 16 "70-806. Application for certification -- filing and
 17 contents -- filing fees -- notice of completion of facility
 18 -- further fees -- refund -- proof of service on
 19 municipalities -- amendment of application or certification.
 20 (1) (a) An applicant for a certificate shall file with the
 21 department a verified application, in such form as the board
 22 by rule or the department by order prescribes, containing
 23 the following information:
 24 (i) a description of the location and of the facility
 25 to be built thereon;

1 (ii) a summary of any studies which have been made of
 2 the environmental impact of the facility;
 3 (iii) a statement explaining the need for the facility;
 4 (iv) a description of any reasonable alternate location
 5 or locations for the proposed facility, a description of the
 6 comparative merits and detriments of each location
 7 submitted, and a statement of the reasons why the primary
 8 proposed location is best suited for the facility; and
 9 (v) such other information as the applicant considers
 10 relevant or as the board by rule or the department by order
 11 requires. A copy or copies of the studies referred to in
 12 clause (ii) above shall be filed with the department, if
 13 ordered, and shall be available for public inspection.
 14 (b) An application may consist of an application for
 15 two (2) or more facilities in combination which are
 16 physically and directly attached to each other and are
 17 operationally a single operating entity.
 18 (2) (a) A filing fee shall be deposited in the
 19 earmarked revenue fund for the use of the department in
 20 administering this chapter. The applicant shall pay to the
 21 department a filing fee with the application, based upon the
 22 estimated cost of the facility according to the declining
 23 scale which follows: two percent (2%) of any estimated
 24 cost up to one million dollars (\$1,000,000); plus one
 25 percent (1%) of any estimated cost over a million dollars

1 and up to twenty million dollars (\$20,000,000); plus
 2 one-half of one percent (0.5%) of any estimated cost over
 3 twenty million dollars (\$20,000,000); and up to one hundred
 4 million dollars (\$100,000,000); plus one-quarter of one
 5 percent (0.25%) of any amount of estimated cost over one
 6 hundred million (\$100,000,000) and up to three hundred
 7 million dollars (\$300,000,000); plus one-eighth of one
 8 percent (.125%) of any amount of estimated cost over three
 9 hundred million dollars (\$300,000,000). The revenues derived
 10 from the filing fee shall be used by the department in
 11 compiling the information required for rendering a decision
 12 on a certificate and for carrying out its other
 13 responsibilities under this chapter with respect to the
 14 facility covered by the certificate for a period not to
 15 exceed five (5) years after the certificate is issued for
 16 facilities defined in 70-803 (3) (b) and (c) or not to
 17 exceed ten (10) years after the certificate is issued for
 18 facilities defined in 70-803 (3)(a), (d), and (e). If an
 19 application consists of a combination of two (2) or more
 20 facilities, the filing fee shall be based on the total
 21 estimated cost of the combined facilities.

22 (b) The applicant is entitled to an accounting of
 23 moneys expended and to a refund of that portion of the
 24 filing fee not expended by the department in carrying out
 25 its responsibilities under this chapter.

1 ~~(c) The department may contract with a potential~~
 2 ~~applicant under this chapter in advance of the filing of a~~
 3 ~~formal application. A potential applicant under this chapter~~
 4 ~~shall contract with the department, at least 1 year in~~
 5 ~~advance of filing a formal application for a facility as~~
 6 ~~defined in 70-803(3)(a), for the development of information~~
 7 or provision of services required hereunder. Payments made
 8 to the department under such a contract shall be credited
 9 against the fee payable hereunder.

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

19 (4) An application shall also be accompanied by proof
 20 that public notice thereof was given to persons, residing in
 21 the municipalities entitled to receive notice under
 22 subsection (3) of this section, by the publication of a
 23 summary of the application, and the date on or about which
 24 it is to be filed, in those newspapers as will serve
 25 substantially to inform those persons of the application.

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

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

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

22 "70-807. Study, evaluation, hearings, and report on
 23 proposed facility ~~---hearing-on-application-for-amendment-of~~
 24 ~~certificate-----hearings.~~ (1) (a) Upon receipt of an
 25 application complying with section 70-806, the department

1 shall commence an intensive study and evaluation of the
 2 proposed facility and its effects, considering all the
 3 criteria listed in sections 70-810 and 70-816.

4 ~~(b) Within 300 days after receipt of an application~~
 5 ~~complying with 70-806, the department shall conduct at least~~
 6 ~~one public hearing to receive public comment on the~~
 7 ~~application or on the department's draft environmental~~
 8 ~~impact statement, pursuant to the hearing procedures set~~
 9 ~~forth in 70-809, provided an environmental impact statement~~
 10 ~~is required under the Montana Environmental Policy Act.~~

11 ~~(c) Within two (2) years 1 year~~ following receipt of
 12 an application for a facility ~~as defined in subsections~~
 13 ~~70-803-(3)(a) and 70-803-(3)(d) and for a facility as~~
 14 ~~defined in subsections 70-803-(3)(b) and (c) which is more~~
 15 ~~than thirty (30) miles in length, and within one (1) year~~
 16 ~~for a facility as defined in subsections 70-803-(3)(b) and~~
 17 ~~(c) which is thirty (30) miles or less in length, the~~
 18 department shall make a report to the board, which shall
 19 contain the department's studies, evaluations,
 20 recommendations, transcript of any hearings, other pertinent
 21 documents resulting from its study and evaluation, and the
 22 final environmental impact statement. ~~if the application is~~
 23 ~~for a combination of two (2) or more facilities, the~~
 24 ~~department shall make its report to the board within the~~
 25 ~~greater of the lengths of time provided for in this~~

1 ~~subsection for either of the facilities.~~

2 (2) ~~The departments of health and environmental~~
 3 ~~sciences, within 240 days after receipt of an application~~
 4 ~~complying with 70-806, the departments of highways,~~
 5 ~~community affairs, fish and game, and public service~~
 6 ~~regulation shall report to the department information~~
 7 ~~relating to the impact of the proposed site on each~~
 8 ~~department's area of expertise. The report may include~~
 9 ~~opinions as to the advisability of granting, denying, or~~
 10 ~~modifying the certificate. The department shall allocate~~
 11 ~~funds obtained from filing fees to the departments making~~
 12 ~~reports to reimburse them for the costs of compiling~~
 13 ~~information and issuing the required report.~~

14 (3) ~~Upon receipt of a copy of an application complying~~
 15 ~~with 70-806, the department of health and environmental~~
 16 ~~sciences shall commence an intensive study and evaluation of~~
 17 ~~the proposed facility and applicable state and federally~~
 18 ~~established standards and implementation plans and shall~~
 19 ~~report to the board of health and environmental sciences~~
 20 ~~within 240 days after receipt of the application.~~

21 (4) ~~Upon receipt of the department of health and~~
 22 ~~environmental sciences' report under subsection (3), the~~
 23 ~~board of health and environmental sciences shall set a date~~
 24 ~~for a hearing; provided a hearing is required under the~~
 25 ~~Montana Environmental Policy Act. The hearing shall commence~~

1 ~~within 60 days after receipt of the department of health and~~
 2 ~~environmental sciences' report and shall be conducted~~
 3 ~~pursuant to the procedures set forth in 70-809.~~

4 (5) ~~Within 1 year after receipt of an application~~
 5 ~~complying with 70-806, the board of health and environmental~~
 6 ~~sciences shall act pursuant to its responsibilities under~~
 7 ~~70-810(1)(h) and report its findings and conclusions~~
 8 ~~together with any transcript of its hearing to the board.~~

9 (3)(6) ~~On an application for an amendment of a~~
 10 ~~certificate, the board shall hold a hearing in the same~~
 11 ~~manner as a hearing is held on an application for a~~
 12 ~~certificate pursuant to the hearing procedures as set forth~~
 13 ~~in 70-809, if the proposed change in the facility would~~
 14 ~~result in any material increase in any environmental impact~~
 15 ~~of the facility or a substantial change in the location of~~
 16 ~~all or a portion of the facility other than as provided in~~
 17 ~~the alternates set forth in the application.~~

18 (4)(7) ~~Upon receipt of the department's report~~
 19 ~~submitted under subsection (1)(c) of this section, the board~~
 20 ~~shall set a date for a hearing. The hearing shall be~~
 21 ~~conducted pursuant to the procedures set forth in 70-809 and~~
 22 ~~shall begin within to begin not more than one hundred twenty~~
 23 ~~(120) 60 days after the receipt, except for those hearings~~
 24 ~~involving applications submitted for facilities as defined~~
 25 ~~in section 70-803(3)(b) and (3)(c), certification hearings~~

1 ~~shall be conducted by the board in the county seat of Lewis~~
 2 ~~and Clark County or the county in which the facility or the~~
 3 ~~greater portion thereof is to be located of the~~
 4 ~~department's report."~~

5 Section 3. Section 70-808, R.C.M. 1947, is amended to
 6 read as follows:

7 "70-808. Parties to certification proceeding --
 8 waiver by failure to participate. ~~(i) The parties to a~~
 9 ~~certification proceeding include:~~

10 ~~(a) the applicant;~~

11 ~~(b) each municipality and government agency entitled~~
 12 ~~to receive service of a copy of the application under~~
 13 ~~subsection 70-806(3);~~

14 ~~(c) any person residing in a municipality entitled to~~
 15 ~~receive service of a copy of the application under~~
 16 ~~subsection 70-806(4); any nonprofit organization formed in~~
 17 ~~whole or in part to promote conservation or natural beauty~~
 18 ~~to protect the environment, personal health or other~~
 19 ~~biological values, to preserve historical sites, to promote~~
 20 ~~consumer interests, to represent commercial and industrial~~
 21 ~~groups, or to promote the orderly development of the areas~~
 22 ~~in which the facility is to be located; or any other~~
 23 ~~interested person; and~~

24 ~~(d) the department;~~

25 (1) Any person may be a party to any hearing under

1 this chapter.

2 (2) Any party identified in subparagraphs (b) and (c)
 3 of subsection (i) of this section waives his right to be a
 4 party if he does not participate orally at the hearing
 5 before hearings of the board or the board of health and
 6 environmental sciences.

7 (3) The department's participation in a hearing under
 8 this chapter shall be limited to presentation of its
 9 studies, evaluations, recommendations, transcript of
 10 hearings, other pertinent documents resulting from its study
 11 and evaluations and final environmental impact statement
 12 conducted pursuant to 70-807(1)."

13 Section 4. Section 70-809, R.C.M. 1947, is amended to
 14 read as follows:

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

1 ~~apply, but the board may make rules designed to exclude~~
 2 ~~repetitive, redundant or irrelevant testimony.~~

3 (1) Any party may offer evidence, written or oral,
 4 regarding any matter contained in the application, pursuant
 5 to the procedural rules set forth in subsections (5) through
 6 (7).

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

11 ~~(3) If the board appoints a hearing examiner to~~
 12 ~~conduct any certification proceedings under this chapter,~~
 13 ~~the hearing examiner may not be a member of the board or an~~
 14 ~~employee of the department. The board shall appoint a~~
 15 ~~hearing examiner who shall conduct all hearings on an~~
 16 ~~application under this chapter. The hearing examiner may not~~
 17 ~~be a member of the board or the board of health and~~
 18 ~~environmental sciences or an employee of any department~~
 19 ~~named in subsections (2) and (3) of 70-807.~~

20 (4) A record shall be made of all hearings conducted
 21 on an application under this chapter. All hearings conducted
 22 under this chapter shall be conducted in the county seat of
 23 Lewis and Clark County or the county in which the facility,
 24 or the greater portion thereof, is to be located.

25 (5) At department hearings under 70-807(1)(a), neither

1 common law nor statutory rules of evidence nor the contested
 2 case procedures of the Montana Administrative Procedure Act
 3 need apply. However, the department or the hearing examiner
 4 may make rules designed to regulate and organize the
 5 department hearing and to exclude irrelevant, immaterial,
 6 and repetitious testimony. The department shall give
 7 reasonable notice of its hearing under 70-807(1)(b).

8 (6) At the board of health and environmental sciences'
 9 hearing under 70-807(4) and the board's hearing under
 10 70-807(6), the contested case procedures of the Montana
 11 Administrative Procedure Act apply. The provisions of the
 12 Montana rules of civil procedure do not apply to such
 13 hearings.

14 (7) At a hearing to amend a certificate, the hearing
 15 examiner need not conduct the hearing and a record of the
 16 hearing need not be made as required under 70-809(4). The
 17 department shall give notice of such application to amend a
 18 certificate by publication of a summary of the application
 19 in a newspaper in the area affected by the proposed
 20 amendment. The board, within 60 days after such notice,
 21 shall conduct a hearing pursuant to this section, which may
 22 be its regular meeting, and act upon the proposed
 23 amendment."

24 Section 5. Section 70-810, R.C.M. 1947, is amended to
 25 read as follows:

1 "70-810. Decision of board -- findings necessary for
2 certificate -- conditions imposed. (1) Within ~~ninety-(90)~~
3 ~~600~~ days after ~~the last day of the hearing~~ an application is
4 filed, the board shall make complete findings, issue an
5 opinion, and render a decision upon the record, either
6 granting or denying the application as filed, or granting it
7 upon such terms, conditions, or modifications of the
8 construction, operation or maintenance of the facility as
9 the board considers appropriate. The board may not grant a
10 certificate either as proposed by the applicant or as
11 modified by the board unless it shall find and determine:

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

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

14 (c) that the facility represents the minimum adverse
15 environmental impact, considering the state of available
16 technology and the nature and economics of the various
17 alternatives;

18 (d) each of the criteria listed in section 70-816;

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

1 and reliability;

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

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

13 (h) that ~~duty--authorized-state-air-and-water-quality~~
14 ~~agencies~~ the board of health and environmental sciences
15 has certified that the proposed facility will not violate
16 state and federally established standards and implementation
17 plans; ~~the~~ the judgments of ~~duty-authorized-air-and-water~~
18 ~~quality-agencies~~ the board of health and environmental
19 sciences are conclusive on all questions related to the
20 satisfaction of state and federal air and water quality
21 standards.

22 (2) (a) If the board determines that the location of
23 all or a part of the proposed facility should be modified,
24 it may condition its certificate upon such modification,
25 provided that the municipalities, and persons residing

1 therein, affected by the modification, have been given
2 reasonable notice of the modification.

3 ~~(b) Within 60 days after the board receives any data
4 or information from the applicant submitted pursuant to any
5 conditions in a certificate under this subsection, the board
6 shall take any action necessary on the data and information
7 submitted by the applicant.~~

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

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

13 (ii) the benefits to the applicant and the state
14 resulting from the proposed facility;

15 (iii) the effects of the economic activity resulting
16 from the proposed facility;

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

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

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

23 Section 6. Section 70-815, R.C.M. 1947, is amended to
24 read as follows:

25 "70-815. Study of planned facilities included in

1 annual long-range report. (1) If a utility or person lists
2 and identifies a proposed facility in its plan, submitted
3 pursuant to section 70-814, as one on which construction is
4 proposed to be commenced within the five (5) year period
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
9 70-816. This study may be continued until such time as a
10 person files an application for a certificate under section
11 70-806. Information gathered under this section may be used
12 to support findings and recommendations required for
13 issuance of a certificate.

14 ~~(2) The department shall review the load growth data
15 and projections submitted in the long-range plans pursuant
16 to 70-814 and shall report on September 1 of each year to
17 the board the department's analysis of the load growth data
18 and projections. The department shall conduct its review of
19 the load growth data and projections in conjunction with
20 each utility submitting a long-range plan pursuant to
21 70-814."~~

22 Section 7. Effective date. This act shall be effective
23 on its passage and approval.

-End-