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House BILL NO. 661
INTRODUCED BY *Bartorel*
BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE APPLICATION, STUDY, AND HEARING PROCEDURES UNDER THE MAJOR FACILITY SITING ACT; DEFINING NEED; PROVIDING FOR A SITING INVENTORY; PROVIDING FOR FORECASTING THE DEMAND FOR ENERGY; AND BROADENING THE SCOPE OF THE PENALTY PROVISION; AMENDING SECTIONS 70-803 THROUGH 70-811, 70-820, AND 70-821, R.C.M. 1947; AND REPEALING SECTIONS 70-825 THROUGH 70-829, R.C.M. 1947."

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

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

"70-803. Definitions. In this chapter, unless the context requires otherwise:

- (1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.
- (2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.
- (3) "Facility" means:
 - (a) each plant, unit, or other facility and

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- associated facilities, except for oil and gas refineries,
 - (i) designed for, or capable of, generating fifty (50) megawatts of electricity or more, or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (ii) designed for, or capable of, producing twenty-five million (25,000,000) cubic feet of gas per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (iii) designed for, or capable of, producing twenty-five thousand (25,000) barrels of liquid hydrocarbon products per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (iv) designed for, or capable of, ~~enriching uranium~~ minerals, isotope enrichment or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or
 - (v) designed for, or capable of, utilizing, refining, or converting five hundred thousand (500,000) tons of coal per year or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000);

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1 (b) each electric transmission line and associated
2 facilities of a design capacity of more than sixty-nine
3 (69) kilovolts, except that the term does not include an
4 electric transmission line and associated facilities of a
5 design capacity of two hundred thirty (230) kilovolts or
6 less and ten (10) miles or less in length;

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

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

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

16 (4) "Associated facilities" include, but are not
17 limited to, transportation links of any kind, aqueducts,
18 diversion dams, transmission substations, storage ponds,
19 reservoirs, and any other device or equipment associated
20 with the production or delivery of the energy form or
21 product produced by a facility, except that the term does
22 not include a facility.

23 (5) "Transmission substation" means any associated
24 facility designed for voltage transformation, voltage
25 regulation, or switching necessary for the construction or

1 operation of a proposed transmission line covered by this
2 chapter.

3 ~~(5)(6)~~ "Commence to construct" means:

4 (a) any clearing of land, excavation, construction, or
5 other action that would affect the environment of the site
6 or route of a facility, but does not mean changes needed for
7 temporary use of sites or routes for nonutility purposes, or
8 uses in securing geological data, including necessary
9 borings to ascertain foundation conditions;

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

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

20 (d) the relocation or upgrading of an existing
21 facility defined by subsection (3)(b) or (c), including
22 upgrading to a design capacity covered by subsection (3)(b),
23 except that the term does not include normal maintenance or
24 repair of an existing facility.

25 ~~(6)(7)~~ "Municipality" means any county or municipality

1 within this state.

2 ~~(7)(8)~~ "Person" means any individual, group, firm,
3 partnership, corporation, cooperative, association,
4 government subdivision, government agency, local government,
5 or other organization or entity.

6 ~~(8)(9)~~ "Utility" means any person engaged in any
7 aspect of the production, storage, sale, delivery or
8 furnishing of heat, electricity, gas, hydrocarbon products
9 or energy in any form for ultimate public use.

10 ~~(9)(10)~~ "Certificate" means the certificate of
11 environmental compatibility ~~and or certificate of~~ public
12 ~~needs or a certificate of environmental compatibility and~~
13 ~~public need~~ issued by the board under this chapter that is
14 required for the construction or operation of a facility.

15 ~~(10)(11)~~ "Addition thereto" means the installation of
16 new machinery and equipment which would significantly change
17 the conditions under which the certificate was issued.

18 ~~(12)~~ "Utility facility" means a facility subject to
19 ~~this chapter and for which a utility is required to make an~~
20 ~~application under this chapter.~~

21 ~~(13)~~ "Need" means ~~only the peak demand within Montana~~
22 ~~of the energy form to be produced projected over a 15-year~~
23 ~~period from the date of application less the existing~~
24 ~~capacity supplying Montana's needs."~~

25 Section 2. Section 70-804, R.C.M. 1947, is amended to

1 read as follows:

2 "70-804. ~~Certificate~~ Certificates from board required
3 prior to construction of facility -- exemptions. (1) A
4 person may not commence to construct a facility in the state
5 without first applying for and obtaining ~~a certificate of~~
6 ~~environmental compatibility and public need~~ the appropriate
7 certificate or certificates issued with respect to the
8 facility by the board. A facility, with respect to which a
9 certificate is issued, may not thereafter be constructed,
10 operated or maintained except in conformity with the
11 certificate and any terms, conditions and modifications
12 contained therein. A certificate may only be issued pursuant
13 to this chapter.

14 (2) A certificate may be transferred, subject to the
15 approval of the department, to a person who agrees to comply
16 with the terms, conditions and modifications contained
17 therein.

18 (3) This chapter does not apply to a facility over
19 which an agency of the federal government has exclusive
20 jurisdiction.

21 (4) The board may adopt reasonable rules establishing
22 exemptions from this chapter for the relocation,
23 reconstruction, or upgrading of a facility that would
24 otherwise be covered by this chapter and that is unlikely to
25 have a significant environmental impact by reason of length,

1 size, location, available space or right-of-way, or
2 construction methods.

3 (5) ~~A certificate of certification~~ is not required under
4 this chapter for a facility under diligent on site physical
5 construction or in operation on January 1, 1973.

6 (6) Prior to commencement of construction of a
7 facility the following certification is required:

8 (a) a certificate of public need and a certificate of
9 environmental compatibility for utility facilities defined
10 in 70-803(3)(a), (3)(d), and (3)(e);

11 (b) a certificate of environmental compatibility for
12 facilities defined in 70-803(3)(a), (3)(d), and (3)(e),
13 other than utility facilities;

14 (c) a certificate of environmental compatibility and
15 public need for facilities defined in 70-803(3)(b) and
16 (3)(c)."

17 Section 3. 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
21 gasification, liquefaction, uranium isotope enrichment
22 facilities. (1) Every "producer" as defined in chapter 16 of
23 Title 84 shall, in addition to the sum required to be paid
24 by that chapter, pay an additional twenty-five hundredths
25 percent (0.25%) of the gross amount as shown on the

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

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

14 Section 4. 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: A person proposing to construct a~~
24 ~~utility facility defined in 70-803(3)(a), (3)(d), or (3)(e)~~
25 ~~shall file with the department a verified application for a~~

1 certificate of public need, in such form as the board by
 2 rule or the department by order prescribes, containing the
 3 following information:

4 (i) a description of the type of facility to be built,
 5 including but not limited to a description of the type of
 6 energy conversion facility, the output capacity, and the
 7 reasons why the type of facility was selected over other
 8 alternatives;

9 (ii) a statement explaining the energy need;

10 (iii) a description of a minimum of four locations for
 11 the proposed facility, a description of the merits and
 12 detriments of each location submitted, and a statement of
 13 how the designated site locations satisfy specific criteria
 14 adopted by the board in its rules; an analysis showing the
 15 relative cost of constructing and operating the facility at
 16 each site, the cost of transporting energy to ultimate
 17 consumers, and a detailed statement of the merits and
 18 detriments of using the waste heat produced at each site
 19 location;

20 (iv) such other information as the applicant considers
 21 relevant or the board by rule or the department by order
 22 requires.

23 (b) An applicant that has received a certificate of
 24 public need shall file with the department a verified
 25 application for a certificate of environmental compatibility

1 in such form and containing such information as the
 2 applicant considers relevant or as the board by rule or the
 3 department by order requires.

4 (2) A person proposing to construct a facility defined
 5 in 70-803(3)(a), (3)(d), and (3)(e), other than a utility
 6 facility, shall file with the department a verified
 7 application for a certificate of environmental
 8 compatibility. A person proposing to construct a facility
 9 defined in 70-803(3)(b) and (3)(c) shall file with the
 10 department a verified application for a certificate of
 11 environmental compatibility and public need. An application
 12 filed under this subsection shall be filed in such form as
 13 the board by rule or the department by order requires,
 14 containing the following information:

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

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

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

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

1 ~~proposed location is best suited for the facility how the~~
 2 ~~designated locations satisfy specific criteria adopted by~~
 3 ~~the board in its rules, an analysis showing the relative~~
 4 ~~cost of constructing and operating the facility at each~~
 5 ~~site, the cost of transporting the product to the ultimate~~
 6 ~~consumers for facilities defined in 70-803(3)(a), (3)(d),~~
 7 ~~and (3)(e), and a detailed statement of the merits and~~
 8 ~~detriments of using the waste heat produced at each site~~
 9 ~~location for facilities defined in 70-803(3)(a), (3)(d), and~~
 10 ~~(3)(e); and~~

11 ~~(v)(e)~~ such other information as the applicant
 12 considers relevant or as the board by rule or the department
 13 by order requires. A copy or copies of the studies referred
 14 to in ~~clause (i)~~ subsection (2)(b) above shall be filed
 15 with the department, if ordered, and shall be available for
 16 public inspection.

17 ~~(b)(3)~~ An application may consist of an application
 18 for two ~~(2)~~ or more facilities in combination which are
 19 physically and directly attached to each other and are
 20 operationally a single operating entity.

21 ~~(2)-(a)(4)~~ The applicant shall pay to the department
 22 a filing fee with the application, which shall be deposited
 23 in the earmarked revenue fund for the use of the department
 24 in administering this chapter. ~~This, as follows:~~

25 (a) for a certificate of public need a fee of \$400,000

1 for a fee based on one-half of the estimated filing fee
 2 under subsection (4)(b), whichever is the lesser:

3 (b) for a certificate of environmental compatibility
 4 and public need or a certificate of environmental
 5 compatibility, the fee shall be based upon the estimated
 6 cost of the facility according to the declining scale which
 7 follows: two percent (2%) of any estimated cost up to one
 8 million dollars (\$1,000,000); plus one percent (1%) of any
 9 estimated cost over a million dollars and up to twenty
 10 million dollars (\$20,000,000); plus one-half of one percent
 11 (0.5%) of any estimated cost over twenty million dollars
 12 (\$20,000,000); and up to one hundred million dollars
 13 (\$100,000,000); plus one-quarter of one percent (0.25%) of
 14 any amount of estimated cost over one hundred million
 15 (\$100,000,000) and up to three hundred million dollars
 16 (\$300,000,000); plus one-eighth of one percent (.125%) of
 17 any amount of estimated cost over three hundred million
 18 dollars (\$300,000,000). The revenues derived from the filing
 19 fee shall be used by the department in compiling the
 20 information required for rendering a decision on a
 21 certificate and for carrying out its other responsibilities
 22 under this chapter with respect to the facility covered by
 23 the certificate for a period not to exceed five (5) years
 24 after the certificate is issued for facilities defined in
 25 70-803 (3) (b) and (c) or not to exceed ten (10) years after

1 the certificate is issued for facilities defined in 70-803
 2 (3)(a), (d), and (e). If an application consists of a
 3 combination of two (2) or more facilities, the filing fee
 4 shall be based on the total estimated cost of the combined
 5 facilities.

6 (c) An applicant that has received a certificate of
 7 public need is entitled to a credit in the amount paid
 8 pursuant to 70-806(4)(a) when filing an application pursuant
 9 to 70-806(1)(b).

10 ~~(b)(d)~~ The applicant is entitled to an accounting of
 11 moneys expended and to a refund of that portion of the
 12 filing fee not expended by the department in carrying out
 13 its responsibilities under this chapter.

14 ~~(c)(e)~~ The department may contract with a potential
 15 applicant under this chapter, in advance of the filing of a
 16 formal application, for the development of information or
 17 provision of services required hereunder. Payments made to
 18 the department under such a contract shall be credited
 19 against the fee payable hereunder.

20 ~~(3)(5)~~ An application shall be accompanied by proof of
 21 service of a copy of the application on the chief executive
 22 officer of each municipality and the head of each government
 23 agency, charged with the duty of protecting the environment
 24 or of planning land use, in the area in which any portion of
 25 the facility is to be located, both as primarily and as

1 alternatively proposed. The copy of the application shall be
 2 accompanied by a notice specifying the date on or about
 3 which the application is to be filed.

4 ~~(4)(6)~~ An application shall also be accompanied by
 5 proof that public notice thereof was given to persons,
 6 residing in the municipalities entitled to receive notice
 7 under subsection ~~(3)(5)~~ of this section, by the publication
 8 of a summary of the application, and the date on or about
 9 which it is to be filed, in those newspapers as will serve
 10 substantially to inform those persons of the application.

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

21 ~~(6)(8)~~ An application for an amendment of an
 22 application or a certificate shall be in such form and
 23 contain such information as the board by rule or the
 24 department by order prescribes. Notice of such an
 25 application shall be given as set forth in subsections ~~(3)~~

1 ~~(5)~~ and ~~(4)(b)~~ of this section. If an amendment to an
2 original application would result in a substantial change of
3 the original application, such an amendment shall be
4 considered as a new application and a new filing fee shall
5 be required."

6 Section 5. Section 70-807, R.C.M. 1947, is amended to
7 read as follows:

8 "70-807. Study, evaluation and report on proposed
9 facility -- hearing on application for amendment of
10 certificate -- hearings. ~~(1) (a) Upon receipt of an~~
11 ~~application complying with 70-806(1)(a), the department~~
12 ~~shall commence an intensive study and evaluation of the need~~
13 ~~for the proposed utility facility, generally considering the~~
14 ~~pertinent criteria listed in 70-810 and 70-816. Within 15~~
15 ~~months following receipt of the application, the department~~
16 ~~shall make a report to the board, which shall contain the~~
17 ~~department's studies, evaluations, recommendations, and~~
18 ~~other pertinent documents resulting from its study and~~
19 ~~evaluation. An environmental impact statement under the~~
20 ~~Montana Environmental Policy Act is not required under this~~
21 ~~subsection.~~

22 ~~(b) Upon receipt of an application complying with~~
23 ~~70-806(1)(b), the department shall commence an intensive~~
24 ~~study and evaluation of the environmental compatibility of~~
25 ~~the proposed utility facility and its effects, considering~~

1 ~~the pertinent criteria listed in 70-810 and 70-816. Within~~
2 ~~20 months following receipt of the application the~~
3 ~~department shall make a report to the board, which shall~~
4 ~~contain the department's studies, evaluations,~~
5 ~~recommendations, other pertinent documents resulting from~~
6 ~~its study and evaluation, and the environmental impact~~
7 ~~statement, if any; However, the department is not required~~
8 ~~to make its report to the board until such time as the~~
9 ~~applicant's final facility design criteria have been under~~
10 ~~study and review by the department for at least 1 year.~~

11 ~~(1)(2) Upon receipt of an application complying with~~
12 ~~section 70-806(2), the department shall commence an~~
13 ~~intensive study and evaluation of the proposed facility and~~
14 ~~its effects, considering all the pertinent criteria listed~~
15 ~~in sections 70-810 and 70-816. Within two (2) years~~
16 ~~following receipt of an application for a facility as~~
17 ~~defined in subsections 70-803(3)(a) and 70-803(3)(d) and~~
18 ~~(3)(e) and for a facility as defined in subsections 70-803~~
19 ~~(3)(b) and (c) which is more than thirty (30) miles in~~
20 ~~length, and within one (1) year for a facility as defined in~~
21 ~~subsections 70-803 (3)(b) and (c) which is thirty (30) miles~~
22 ~~or less in length, the department shall make a report to the~~
23 ~~board, which shall contain the department's studies,~~
24 ~~evaluations, recommendations, other pertinent documents~~
25 ~~resulting from its study and evaluation, and the find~~

1 environmental impact statement, if any. If the application
2 is for a combination of two (2) or more facilities, the
3 department shall make its report to the board within the
4 greater of the lengths of time provided for in this
5 subsection for either of the facilities.

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

16 ~~(3)~~(4) On an application for an amendment of a
17 certificate, the board shall hold a hearing in the same
18 manner as a hearing is held on an application for a
19 certificate if the proposed change in the facility would
20 result in any material increase in any environmental impact
21 of the facility or a substantial change in the location of
22 all or a portion of the facility other than as provided in
23 the alternates set forth in the application.

24 ~~(4)~~(5) Upon receipt of the department's report
25 submitted under ~~subsection~~ subsections (1) and (2) of this

1 section, the board shall set a date for a hearing to begin
2 not more than one hundred twenty (120) days after the
3 receipt; except for those hearings involving applications
4 submitted for facilities as defined in section 70-803(3)(b)
5 and (3)(c), certification hearings shall be conducted by the
6 board in the county seat of Lewis and Clark County or the
7 county in which the facility, or the greater portion
8 thereof, is to be located; except that in a hearing
9 conducted in the county seat of Lewis and Clark County the
10 board shall provide a reasonable time for conducting a
11 portion of the hearing in the county in which the facility
12 or the greater portion thereof is to be located, if
13 requested by 25 persons in the affected area."

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

16 "70-808. Parties to certification proceeding -- waiver
17 by failure to participate. ~~(1)---The---parties---to---a~~
18 ~~certification-proceeding-include:~~

19 ~~(a)---the-applicant;~~

20 ~~(b)---each---municipality---and-government-agency-entitled~~
21 ~~to-serve-service---of---a---copy---of---the---application---under~~
22 ~~subsection---70-806-(3);~~

23 ~~(c)---any---person---residing-in-a-municipality-entitled-to~~
24 ~~receive---service---of---a---copy---of---the---application---under~~
25 ~~subsection---70-806(4);~~ ~~any-nonprofit-organization-formed-in~~

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

8 ~~(d) the department.~~

9 (1) Any person may be a party to any hearing under
 10 this chapter.

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

15 Section 7. Section 70-809, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-809. Record of hearing -- procedure -- rules of
 18 evidence -- burden of proof. (1) Any studies,
 19 investigations, reports, or other documentary evidence,
 20 including those prepared by the department, which any party
 21 wishes the board to consider or which the board itself
 22 expects to utilize or rely upon, shall be made a part of the
 23 record; a record shall be made of the hearing and of all
 24 testimony taken; and the contested case procedures of the
 25 Montana Administrative Procedure Act (Title 82, chapter 42,

1 R.C.M. 1947) shall apply to the hearing, except that
 2 neither common law nor statutory rules of evidence need
 3 apply, but the board may ~~shall~~ make rules designed to
 4 exclude repetitive, redundant or irrelevant testimony.

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

9 (3) If the board appoints a hearing examiner to
 10 conduct any certification proceedings under this chapter,
 11 the hearing examiner may not be a member of the board or an
 12 employee of the department. The hearing examiner shall issue
 13 proposed findings of fact, conclusions of law, an opinion, a
 14 decision, and a certificate."

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

17 "70-810. Decision of board -- findings necessary for
 18 certificate -- conditions imposed. (1) ~~Within ninety (90)~~
 19 ~~days~~ 9 months after the ~~last day~~ commencement of the
 20 hearing, the board shall make complete findings, issue an
 21 opinion, and render a decision upon the record, either
 22 granting or denying the application as filed, or granting it
 23 upon such terms, conditions, or modifications of the
 24 construction, operation or maintenance of the facility as
 25 the board considers appropriate; except that the board, upon

1 ~~clear and convincing showing of good cause, may extend the~~
2 ~~time for making a final decision.~~

3 (2) The board may not grant a certificate of
4 ~~environmental compatibility and public need~~ either as
5 proposed by the applicant or as modified by the board unless
6 it shall find ~~finds~~ and determine ~~determines~~:

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 70-816;

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

22 (f) that the location of the facility as proposed
23 conforms to applicable state and local laws and regulations
24 issued thereunder, except that the board may refuse to apply
25 any local law or regulation if it finds that, as applied to

1 the proposed facility, the law or regulation is unreasonably
2 restrictive in view of the existing technology, or of
3 factors of cost or economics, or of the needs of consumers
4 whether located inside or outside of the directly affected
5 government subdivisions;

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

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

15 ~~(3) The board may not grant a certificate of public~~
16 ~~need either as proposed by the applicant or as modified by~~
17 ~~the board unless it finds and determines:~~

18 ~~(a) the need for the facility;~~

19 ~~(b) the general nature of the probable environmental~~
20 ~~impact considering the type and location of the facility;~~

21 ~~(c) that the site location and type of the facility~~
22 ~~generally represent less environmental impact than other~~
23 ~~sites and types considering the state of available~~
24 ~~technology and the nature and economics of the various~~
25 ~~alternatives;~~

1 (d) the pertinent criteria listed in 70-816; and
 2 (e) 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, of factors
 8 of cost or economics, or of the needs of consumers whether
 9 located inside or outside of the directly affected
 10 government subdivisions.

11 (4) The board may not grant either a certificate of
 12 environmental compatibility for a facility other than a
 13 utility facility or a certificate of environmental
 14 compatibility with respect to a utility facility for which a
 15 certificate of public need has been issued either as
 16 proposed by the applicant or as modified by the board unless
 17 it finds and determines all the criteria listed in
 18 70-810(2), except that the board may not find and determine
 19 the basis of the need for the facility.

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

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

4 (i) the items listed in subsections ~~(2)(a)~~ through
 5 ~~(2)(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 public
 11 health, welfare, and safety;

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

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

16 Section 9. Section 70-811, R.C.M. 1947, is amended to
 17 read as follows:

18 "70-811. Opinion issued with decision -- contents of
 19 certificate -- waiver of time requirements -- facilities for
 20 which certificate required. (1) In rendering a decision on
 21 an application for a certificate, the board shall issue an
 22 opinion stating its reasons for the action taken. If the
 23 board has found that any regional or local law or
 24 regulation, which would be otherwise applicable, is
 25 unreasonably restrictive pursuant to subsection

1 70-810~~(1)~~(2)(f), it shall state in its opinion the reasons
2 therefor.

3 ~~(2) A certificate of public need issued by the board~~
4 ~~shall include the following:~~

5 ~~(a) a public need statement related to the facility~~
6 ~~being certified which includes but is not limited to~~
7 ~~analysis of the following information:~~

8 ~~(i) the need for the facility;~~

9 ~~(ii) problems and objections raised by federal and~~
10 ~~state agencies and groups; and~~

11 ~~(iii) alternatives to the proposed facility; and~~

12 ~~(b) a statement signed by the applicant stating an~~
13 ~~intention to file an application for a certificate of~~
14 ~~environmental compatibility, stating the date upon which the~~
15 ~~applicant intends to file and stating agreement to comply~~
16 ~~with the conditions of the certificate.~~

17 ~~(2)(3) Any certificate All other certificates issued~~
18 ~~by the board shall include the following:~~

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

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

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

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

3 (iv) alternatives to the proposed facility; 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 chapter
8 and the conditions of the certificate.

9 ~~(3)(4) Any of the provisions described in sections~~
10 ~~70-807 through 70-811 may be waived by the board, for good~~
11 ~~cause shown, with respect to applications filed before~~
12 ~~January 1, 1975. Applications for certificates under this~~
13 ~~subsection must be promptly filed.~~

14 ~~(4)(5) (a) The board may waive compliance with any of~~
15 ~~the provisions of sections 70-807 through 70-811 if the~~
16 ~~applicant for a certificate of public need makes a clear and~~
17 ~~convincing showing to the board at a public hearing that an~~
18 ~~immediate, urgent need for a facility exists and that the~~
19 ~~applicant did not have knowledge that the need for the~~
20 ~~facility existed sufficiently in advance to fully comply~~
21 ~~with the provisions of sections 70-807 through 70-811.~~

22 (b) The board may waive compliance with any of the
23 provisions of this chapter upon receipt of notice by a
24 utility or person subject to this chapter that a facility or
25 associated facility has been damaged or destroyed as a

1 result of fire, flood or other natural disaster or as the
 2 result of insurrection, war or other civil disorder, and
 3 there exists an immediate need for construction of a new
 4 facility or associated facility or the relocation of a
 5 previously existing facility or associated facility in order
 6 to promote the public welfare."

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

9 "70-820. Adoption of rules -- monitoring of
 10 facilities. (1) The board may adopt rules implementing the
 11 provisions of this chapter, including, but not limited to,
 12 rules:

13 (a) governing the form and content of applications;
 14 (b) further defining the terms used in this chapter;
 15 (c) governing the form and content of long-range
 16 plans;
 17 (d) any other rules the board considers necessary to
 18 accomplish the purposes and objectives of this chapter.

19 (2) The board and the department shall monitor the
 20 operations of all certificated facilities, for assuring
 21 continuing compliance with this chapter and certificates
 22 issued hereunder, and for discovering and preventing
 23 noncompliance with this chapter and the certificates.

24 (3) A plan for monitoring the proposed facility shall
 25 be prepared by the department and approved by the board. The

1 preparation of the plan by the department shall be in
 2 conjunction with duly authorized state air, water,
 3 reclamation, or other appropriate state agencies and the
 4 applicant. For facilities defined in 70-803(3)(a), (3)(d),
 5 and (3)(e), the monitoring plan shall be submitted for the
 6 board's approval within 6 months after the issuance of the
 7 certificate. For facilities defined in 70-803(3)(b) and
 8 (3)(c), the monitoring plan shall be submitted for the
 9 board's approval together with the rights-of-way location.
 10 Implementation of the plan shall be funded by the applicant
 11 and overseen by the department and the appropriate state
 12 agencies.

13 ~~(3)(4)~~ The board shall adopt rules requiring every
 14 person who proposes to gather geological data by boring of
 15 test holes or other underground exploration, investigation,
 16 or experimentation, related to the possible future
 17 development of a facility employing geothermal resources, to
 18 comply with the following requirements:

19 (a) Notify the department of the proposed action;
 20 (b) Submit to the department a description of the area
 21 involved;
 22 (c) Submit to the department a statement of the
 23 proposed activities to be conducted and the methods to be
 24 utilized;
 25 (d) Submit to the department geological data reports

1 at such times as may be required by the rules; and
 2 (e) Submit such other information as the board may
 3 require in the rules."
 4 Section 11. Section 70-821, R.C.M. 1947, is amended to
 5 read as follows:
 6 "70-821. Penalties for violation of chapter -- civil
 7 action by attorney general. (1) Whoever
 8 (a) without first obtaining a certificate required
 9 under section 70-804, or a waiver thereof under section
 10 70-811(4)(5)(b) commences to construct or operate a
 11 facility; or
 12 (b) having first obtained a certificate, constructs,
 13 operates or maintains a facility other than in compliance
 14 with the certificate; or
 15 (c) violates any other provision of this chapter or
 16 any rule or order adopted thereunder, or knowingly submits
 17 false or misleading information in any report, 10-year plan
 18 or application required by this chapter or rule or order
 19 adopted thereunder; or
 20 (d) causes any of the aforementioned acts to occur;
 21 shall be liable to a civil penalty of not more than ten
 22 thousand dollars (\$10,000) for each violation. Each day of a
 23 continuing violation shall constitute a separate offense.
 24 The penalty shall be recoverable in a civil suit brought by
 25 the attorney general on behalf of the state in the first

1 district court of Montana.
 2 (2) Whoever knowingly and willfully violates
 3 subsection (1) shall be fined not more than ten thousand
 4 dollars (\$10,000) for each violation or imprisoned for not
 5 more than one (1) year, or both. Each day of a continuing
 6 violation shall constitute a separate offense.
 7 (3) In addition to any penalty provided in subsections
 8 (1) or (2), whenever the department determines that a person
 9 is violating or is about to violate any of the provisions of
 10 this section, it may refer the matter to the attorney
 11 general who may bring a civil action on behalf of the state
 12 in the first district court of Montana for injunctive or
 13 other appropriate relief against the violation and to
 14 enforce this chapter or a certificate issued hereunder, and
 15 upon a proper showing a permanent or preliminary injunction
 16 or temporary restraining order shall be granted without
 17 bond. The department shall also enforce this chapter and
 18 bring legal actions to accomplish the enforcement through
 19 its own legal counsel.
 20 (4) All fines and penalties collected shall be
 21 deposited in the earmarked revenue fund for the use of the
 22 department in administering this chapter."
 23 Section 12. There is a new R.C.M. section numbered
 24 70-830 that reads as follows:
 25 70-830. Siting inventory. By July 1, 1978, the

1 department shall propose criteria upon which to establish
 2 areas of Montana considered unsuitable for the siting of
 3 facilities defined in 70-803(3)(a). The board shall adopt as
 4 rules criteria upon which to establish such areas within 6
 5 months after receiving the department proposal. Upon
 6 adoption of the criteria as rules the department shall map
 7 the unsuitable areas of the state based on the established
 8 criteria. The department shall present the completed map
 9 delineating areas unsuitable for siting of facilities to the
 10 board for adoption as rules. Following board adoption of the
 11 unsuitable area delineation, the department may not accept
 12 applications for certificates for sites within areas
 13 designated as unsuitable.

14 Section 13. There is a new R.C.M. section numbered
 15 70-831 that reads as follows:

16 70-831. Forecasting. By July 1, 1979, the department
 17 shall devise a methodology for forecasting the demand for
 18 energy within the state of Montana and construct forecasts
 19 for periods 1 through 5, 10, and 20 years into the future.
 20 As used herein the term energy includes but is not limited
 21 to electricity and gas. The forecasts shall be updated and
 22 publicized annually. The department shall use the forecasts
 23 in making its recommendations to the board on applications
 24 under this chapter. The board shall use the forecasts in its
 25 evaluation of the energy need as required by this chapter.

1 Section 14. Repealer. Sections 70-825 through 70-829,
 2 R.C.M. 1947, are repealed.

-End-

Approved by Comm. on Appropriations

HOUSE BILL NO. 661

INTRODUCED BY BARDANOUVE, HUENNEKENS, MELOY

BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE APPLICATION, STUDY, AND HEARING PROCEDURES UNDER THE MAJOR FACILITY SITING ACT; DEFINING NEED; PROVIDING FOR A SITING INVENTORY; PROVIDING FOR FORECASTING THE DEMAND FOR ENERGY; AND BROADENING THE SCOPE OF THE PENALTY PROVISION; AMENDING SECTIONS 70-802, 70-803 THROUGH 70-811, 70-815, 70-820, AND 70-821, R.C.M. 1947; AND REPEALING SECTIONS 70-825 THROUGH 70-829, R.C.M. 1947; AND PROVIDING AN APPROPRIATION."

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

SECTION 1. SECTION 70-802, R.C.M. 1947, IS AMENDED TO

READ AS FOLLOWS:

"70-802. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of

SECOND READING
Second Printing

additional power-or energy conversion or certain industrial facilities may be necessary to meet the increasing need for electricity, energy, and other products, and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power--and energy conversion and certain industrial facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power-or an energy conversion or certain industrial facility may not be constructed or operated within this state without a the appropriate certificate of environmental compatibility--and--public--need acquired pursuant to this chapter."

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

"70-803. Definitions. In this chapter, unless the context requires otherwise:

- (1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.
(2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.
(3) "Facility" means:

1 (a) each plant, unit, or other facility and
2 associated facilities, ~~except for oil and gas refineries,~~
3 ~~EXCEPT FOR OIL AND GAS REFINERIES.~~

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

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

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

19 (iv) designed for, or capable of, enriching uranium
20 minerals, isotope enrichment or any addition thereto having
21 an estimated cost in excess of two hundred fifty thousand
22 dollars (\$250,000), or

23 (v) designed for, or capable of, utilizing, refining,
24 or converting five hundred thousand (500,000) tons of coal
25 per year or more, or any addition thereto having an

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

3 (b) each electric transmission line and associated
4 facilities of a design capacity of more than sixty-nine
5 (69) kilovolts, except that the term does not include an
6 electric transmission line and associated facilities of a
7 design capacity of two hundred thirty (230) kilovolts or
8 less and ten (10) miles or less in length;

9 (c) each pipeline and associated facilities designed
10 for, or capable of, transporting gas, water, or liquid
11 hydrocarbon products from or to a UTILITY facility located
12 within or without this state of the size indicated in
13 subsection (3)(a) of this section;

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

17 (e) any underground in situ gasification of coal;

18 ~~(f) ANY INDUSTRIAL FACILITY WITH A CONSTRUCTION COST~~
19 ~~OF AT LEAST \$25 MILLION WHICH PROCESSES, SMELTS, REFINES,~~
20 ~~REFINES, OR MANUFACTURES ANY NATURAL RESOURCE FOR SALE OR~~
21 ~~COMMERCIAL USE HANDLES OR PROCESSES PHOSPHATE OR POTASH, OR~~
22 ~~METALLIFEROUS ORES AFTER THE ORES ARE MINED UNTIL SUCH TIME~~
23 ~~AS THE METAL IS IN ELEMENTAL FORM, EXCEPT THAT TRUCK OR RAIL~~
24 ~~TRANSPORTATION OF METALLIFEROUS ORES, POTASH OR PHOSPHATE IS~~
25 ~~NOT INCLUDED. METALLIFEROUS ORE MEANS A MINERAL DEPOSIT FROM~~

1 ~~WHICH METAL OR METALS ARE EXTRACTED BY METALLURGICAL~~
 2 ~~PROCESSES.~~

3 (4) "Associated facilities" include, but are not
 4 limited to, transportation links of any kind, aqueducts,
 5 diversion dams, transmission substations, storage ponds,
 6 reservoirs, and any other device or equipment associated
 7 with the production or delivery of the energy form or
 8 product produced by a facility, except that the term does
 9 not include a facility.

10 ~~(5) "Transmission substation" means any associated~~
 11 ~~facility designed for voltage transformation, voltage~~
 12 ~~regulation, or switching necessary for the construction or~~
 13 ~~operation of a proposed transmission line covered by this~~
 14 ~~chapter.~~

15 ~~(5)(6)~~ "Commence to construct" means:

16 (a) any clearing of land, excavation, construction, or
 17 other action that would affect the environment of the site
 18 or route of a facility, but does not mean changes needed for
 19 temporary use of sites or routes for nonutility purposes, or
 20 uses in securing geological data, including necessary
 21 borings to ascertain foundation conditions;

22 (b) the fracturing of underground formations by any
 23 means, if such activity is related to the possible future
 24 development of a gasification facility or a facility
 25 employing geothermal resources, but does not include the

1 gathering of geological data by boring of test holes or
 2 other underground exploration, investigation, or
 3 experimentation;

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

7 (d) the relocation or upgrading of an existing
 8 facility defined by subsection (3)(b) or (c), including
 9 upgrading to a design capacity covered by subsection (3)(b),
 10 except that the term does not include normal maintenance or
 11 repair of an existing facility.

12 ~~(6)(7)~~ "Municipality" means any county or municipality
 13 within this state.

14 ~~(7)(8)~~ "Person" means any individual, group, firm,
 15 partnership, corporation, cooperative, association,
 16 government subdivision, government agency, local government,
 17 or other organization or entity.

18 ~~(8)(9)~~ "Utility" means any person engaged in any
 19 aspect of the production, storage, sale, delivery or
 20 furnishing of heat, electricity, ~~or gas~~--hydrocarbon
 21 ~~products or energy~~ in any form for ultimate public use.

22 ~~(9)(10)~~ "Certificate" means the certificate of
 23 environmental compatibility ~~and or certificate of A&D~~ public
 24 ~~need, or a certificate of environmental compatibility and~~
 25 ~~public need~~ issued by the board under this chapter that is

1 required for the construction or operation of a facility.

2 ~~(10)(11)~~ "Addition thereto" means the installation of
3 new machinery and equipment which would significantly change
4 the conditions under which the certificate was issued.

5 ~~(12)~~ "Utility facility" means a facility subject to
6 this chapter and for which a utility is required to make an
7 application under this chapter.

8 ~~(13)~~ "Need" means only the peak demand within Montana
9 of the energy form to be produced projected over a 15 year
10 period from the date of application less the existing
11 capacity supplying Montana's needs. ~~THE DEMAND WITHIN~~
12 ~~MONTANA OF THE ENERGY FORM TO BE PRODUCED BY THE PROPOSED~~
13 ~~UTILITY FACILITY AS DEFINED IN 70-803 (3)(A), (3)(C), AND~~
14 ~~(3)(D) WITH THE FOLLOWING CONDITIONS:~~

15 ~~(A) 20% OR LESS OF THE ELECTRICITY OR SYNTHETIC~~
16 ~~PIPE LINE GAS PRODUCED BY THE PROPOSED UTILITY FACILITY OVER~~
17 ~~A PERIOD EXTENDING THROUGH THE 20TH YEAR FROM THE DATE OF~~
18 ~~THE APPLICATION MAY BE SOLD OUTSIDE THE STATE; PROVIDED,~~
19 ~~HOWEVER, THAT AN OCCASIONAL OR EMERGENCY SALE OUTSIDE THE~~
20 ~~STATE MAY BE MADE IN ADDITION TO THE LIMITATION OF THIS~~
21 ~~PARAGRAPH;~~

22 ~~(B) IF A UTILITY SELLS 20% OR MORE OF ITS AVERAGE~~
23 ~~ANNUAL SALES OF THE ELECTRICITY OR SYNTHETIC PIPE LINE GAS~~
24 ~~TO BE PRODUCED BY THE PROPOSED FACILITY TO CUSTOMERS WITHIN~~
25 ~~THE STATE OF MONTANA, THEN THE DEMAND FOR THIS ENERGY FORM~~

1 ~~FROM THE UTILITY'S ENTIRE SERVICE AREA IS INCLUDED AS DEMAND~~
2 ~~WITHIN MONTANA.~~

3 ~~(14) "NATURAL RESOURCE" MEANS ANY METALLIFEROUS OR~~
4 ~~NONMETALLIFEROUS MINERAL PRODUCTS, OR COMBINATION OR~~
5 ~~COMPOUND OF SUCH PRODUCTS, BUT DOES NOT MEAN TIMBER OR ANY~~
6 ~~PRODUCTS THEREOF."~~

7 Section 3. Section 70-804, R.C.M. 1947, is amended to
8 read as follows:

9 "70-804. Certificate ~~Certificates~~ from board required
10 prior to construction of facility -- exemptions. (1) A
11 person may not commence to construct a facility in the state
12 without first applying for and obtaining a certificate of
13 environmental compatibility and public need the appropriate
14 ~~certificate or certificates~~ issued with respect to the
15 facility by the board. A facility, with respect to which a
16 certificate is issued, may not thereafter be constructed,
17 operated or maintained except in conformity with the
18 certificate and any terms, conditions and modifications
19 contained therein. A certificate may only be issued pursuant
20 to this 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 chapter does not apply to a facility over

1 which an agency of the federal government has exclusive
2 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 of certification~~ is not required under
11 this chapter for a facility under diligent on site physical
12 construction or in operation on January 1, 1973.

13 ~~(6) Prior to commencement of construction of a~~
14 ~~facility the following certification is required:~~

15 ~~(a) a certificate of public need and a certificate of~~
16 ~~environmental compatibility AND PUBLIC NEED for utility~~
17 ~~facilities defined in 70-803(3)(a), (3)(b), (3)(c), (3)(d),~~
18 ~~and (3)(e);~~

19 ~~(b) a certificate of environmental compatibility for~~
20 ~~facilities defined in 70-803(3)(a), (3)(d), and (3)(e), AND~~
21 ~~(3)(f), other than utility facilities;~~

22 ~~(c) a certificate of environmental compatibility and~~
23 ~~public need for facilities defined in 70-803(3)(b) and~~
24 ~~(3)(e)."~~

25 Section 4. Section 70-805, R.C.M. 1947, is amended to

1 read as follows:

2 "70-805. Surcharge on electric energy producer's
3 license tax -- administrative expenses -- tax on
4 gasification, liquefaction, ~~uranium isotope~~ enrichment
5 facilities. (1) Every "producer" as defined in chapter 16 of
6 Title 84 shall, in addition to the sum required to be paid
7 by that chapter, pay an additional twenty-five hundredths
8 percent (0.25%) of the gross amount as shown on the
9 statement which is required by that chapter, in the same
10 manner and within the time provided by that chapter. The
11 department of revenue shall report to the state treasurer
12 separately the amount transmitted to the state treasurer
13 which is added to the electrical energy producers' license
14 tax by this section.

15 (2) The legislature shall appropriate sufficient funds
16 to finance the department's activities in carrying out its
17 duties under this chapter. The legislature shall provide a
18 tax on gasification, liquefaction, coal conversion, and
19 ~~uranium isotope~~ enrichment facilities ~~AND ANY OTHER~~
20 ~~INDUSTRIAL FACILITY UNDER THIS ACT~~ sufficient to produce an
21 amount of revenue equal to that derived from electrical
22 energy producers under this section."

23 Section 5. Section 70-806, R.C.M. 1947, is amended to
24 read as follows:

25 "70-806. Application for certification -- filing and

1 contents -- filing fees -- notice of completion of facility
 2 -- further fees -- refund -- proof of service on
 3 municipalities -- amendment of application or certification.
 4 (1) (a) ~~An applicant for a certificate shall file with the~~
 5 ~~department a verified application, in such form as the board~~
 6 ~~by rule or the department by order prescribes, containing~~
 7 ~~the following information: A person proposing to construct a~~
 8 ~~utility facility defined in 72-803(3)(a), (3)(d), or (3)(e)~~
 9 ~~shall file with the department a verified application for a~~
 10 ~~certificate of public need, in such form as the board by~~
 11 ~~rule or the department by order prescribes, containing the~~
 12 ~~following information:~~
 13 ~~(i) a description of the type of facility to be built,~~
 14 ~~including but not limited to a description of the type of~~
 15 ~~energy conversion facility, the output capacity, and the~~
 16 ~~reasons why the type of facility was selected over other~~
 17 ~~alternatives;~~
 18 ~~(ii) a statement explaining the energy need;~~
 19 ~~(iii) a description of a minimum of four locations for~~
 20 ~~the proposed facility, a description of the merits and~~
 21 ~~detriments of each location submitted, and a statement of~~
 22 ~~how the designated site locations satisfy specific criteria~~
 23 ~~adopted by the board in its recent analysis showing the~~
 24 ~~relative cost of constructing and operating the facility at~~
 25 ~~each site, the cost of transporting energy to ultimate~~

1 ~~consumers, and a detailed statement of the merits and~~
 2 ~~detriments of using the waste heat produced at each site~~
 3 ~~location;~~
 4 ~~(iv) such other information as the applicant considers~~
 5 ~~relevant or the board by rule or the department by order~~
 6 ~~requires;~~
 7 ~~(b) An applicant that has received a certificate of~~
 8 ~~public need shall file with the department a verified~~
 9 ~~application for a certificate of environmental compatibility~~
 10 ~~in such form and containing such information as the~~
 11 ~~applicant considers relevant or as the board by rule or the~~
 12 ~~department by order requires. ENVIRONMENTAL COMPATIBILITY~~
 13 ~~AND PUBLIC NEED IN SUCH FORM AS THE BOARD BY RULE OR THE~~
 14 ~~DEPARTMENT BY ORDER PRESCRIBES, CONTAINING THE FOLLOWING~~
 15 ~~INFORMATION:~~
 16 ~~(A) A DESCRIPTION OF THE LOCATION AND OF THE FACILITY~~
 17 ~~TO BE BUILT THEREON;~~
 18 ~~(B) A SUMMARY OF ANY STUDIES WHICH HAVE BEEN MADE OF~~
 19 ~~THE ENVIRONMENTAL IMPACT OF THE FACILITY;~~
 20 ~~(C) A STATEMENT EXPLAINING THE NEED FOR THE FACILITY;~~
 21 ~~(D) A DESCRIPTION OF ANY REASONABLE ALTERNATIVE~~
 22 ~~LOCATION OR LOCATIONS FOR THE PROPOSED FACILITY, A~~
 23 ~~DESCRIPTION OF THE COMPARATIVE MERITS AND DETRIMENTS OF EACH~~
 24 ~~LOCATION SUBMITTED, A DETAILED STATEMENT OF THE MERITS AND~~
 25 ~~DETRIMENTS OF USING WASTE HEAT PRODUCED AT EACH LOCATION.~~

1 AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED
 2 LOCATION IS BEST SUITED FOR THE FACILITY:

3 (E) AN ANALYSIS SHOWING THE RELATIVE COST OF
 4 CONSTRUCTING AND OPERATING THE FACILITY AT EACH LOCATION, AN
 5 ANALYSIS OF THE RELATIVE COST OF TRANSPORTING ENERGY FROM
 6 EACH LOCATION TO ULTIMATE CONSUMERS, PROVIDED, HOWEVER THAT
 7 THIS INFORMATION IS PROPRIETARY AND SHALL BE KEPT
 8 CONFIDENTIAL; AND

9 (F) 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 SUBSECTION (B) ABOVE SHALL BE FILED WITH THE DEPARTMENT IF
 13 ORDERED, AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION.

14 (2) A person proposing to construct a facility defined
 15 in 79-803(3)(a), (3)(d), and (3)(e), AND (3)(F), other than
 16 a utility facility, shall file with the department a
 17 verified application for a certificate of environmental
 18 compatibility IN SUCH FORM AS THE BOARD BY RULE OR THE
 19 DEPARTMENT BY ORDER PRESCRIBES, CONTAINING THE FOLLOWING
 20 INFORMATION:

21 (A) A DESCRIPTION OF THE LOCATION AND OF THE FACILITY
 22 TO BE BUILT THEREON;

23 (B) A SUMMARY OF ANY STUDIES WHICH HAVE BEEN MADE OF
 24 THE ENVIRONMENTAL IMPACT OF THE FACILITY;

25 (C) A DESCRIPTION OF ANY REASONABLE ALTERNATIVE

1 LOCATION OR LOCATIONS FOR THE PROPOSED FACILITY, A
 2 DESCRIPTION OF THE COMPARATIVE MERITS AND DETRIMENTS OF EACH
 3 LOCATION SUBMITTED, A DETAILED STATEMENT OF THE MERITS AND
 4 DETRIMENTS OF USING THE WASTE HEAT PRODUCED AT EACH SITE
 5 LOCATION, AND A STATEMENT OF THE REASONS WHY THE PRIMARY
 6 PROPOSED LOCATION IS BEST SUITED FOR THE FACILITY:

7 (D) AN ANALYSIS SHOWING THE RELATIVE COST OF
 8 CONSTRUCTING AND OPERATING THE FACILITY AT EACH SITE, AN
 9 ANALYSIS OF THE RELATIVE COST OF TRANSPORTING THE PRODUCT
 10 FROM EACH SITE LOCATION TO THE ULTIMATE CONSUMERS, PROVIDED,
 11 HOWEVER THAT THIS INFORMATION IS PROPRIETARY AND SHALL BE
 12 KEPT CONFIDENTIAL; AND

13 (E) SUCH OTHER INFORMATION AS THE APPLICANT CONSIDERS
 14 RELEVANT OR AS THE BOARD BY RULE OR THE DEPARTMENT BY ORDER
 15 REQUIRES, A COPY OR COPIES OF THE STUDIES REFERRED TO IN
 16 SUBSECTION (2)(B) ABOVE SHALL BE FILED WITH THE DEPARTMENT,
 17 IF ORDERED, AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION.

18 (3) A person proposing to construct a facility defined
 19 in 79-804(3)(b) and (3)(c) shall file with the department a
 20 verified application for a certificate of environmental
 21 compatibility and public needs. An application filed under
 22 this subsection shall be filed in such form as the board by
 23 rule or the department by order requires PRESCRIBES,
 24 containing the following information:

25 (i)(a) a description of the location and of the

1 facility to be built thereon;

2 (iii)(b) a summary of any studies which have been made
3 of the environmental impact of the facility;

4 (iii)(c) a statement explaining the need for the
5 facility;

6 ~~(iv)(d) a description of any reasonable alternate
7 location or locations for the proposed facility a minimum of
8 four locations for the proposed facility, a description of
9 the comparative merits and detriments of each location
10 submitted, and a statement of the reasons why the primary
11 proposed location is best suited for the facility how the
12 designated locations satisfy specific criteria adopted by
13 the board in its rules, an analysis showing the relative
14 cost of constructing and operating the facility at each
15 sites, the cost of transporting the product to the ultimate
16 consumers for facilities defined in 70-893131(a), (3)(d),
17 and (3)(e), and a detailed statement of the merits and
18 detriments of using the waste heat produced at each site
19 location for facilities defined in 70-893131(a), (3)(d), and
20 (3)(e) and~~ A DESCRIPTION OF THE AVAILABILITY OF VARIOUS
21 ALTERNATIVE TECHNOLOGIES THAT CAN FULFILL THE NEED,
22 INCLUDING A COMPARISON OF THE MERITS AND DETRIMENTS OF THE
23 VARIOUS ALTERNATIVES;

24 (E) A DESCRIPTION OF ANY REASONABLE ALTERNATIVE
25 LOCATION OR LOCATIONS FOR THE PROPOSED FACILITY; A

1 DESCRIPTION OF THE COMPARATIVE MERITS AND DETRIMENTS OF EACH
2 LOCATION SUBMITTED, AND A STATEMENT OF THE REASONS WHY THE
3 PRIMARY PROPOSED LOCATION IS BEST SUITED FOR THE FACILITY;
4 AND

5 ~~(v)(e)~~ (E) such other information as the applicant
6 considers relevant or as the board by rule or the department
7 by order requires. A copy or copies of the studies referred
8 to in clause (ii) subsection ~~(2)(b)~~ (3)(B) above shall be
9 filed with the department, if ordered, and shall be
10 available for public inspection.

11 ~~(b)(3)(4)~~ An application may consist of an application
12 for two ~~(2)~~ or more facilities in combination which are
13 physically and directly attached to each other and are
14 operationally a single operating entity.

15 ~~(2)-(e)(4)~~ (4) The applicant shall pay to the
16 department a filing fee with the application, which shall be
17 deposited in the earmarked revenue fund for the use of the
18 department in administering this chapter. ~~This, THIS, as~~
19 follows:

20 ~~(a) for a certificate of public need a fee of \$400,000
21 for a fee based on one-half of the estimated filing fee
22 under subsection (1)(b), whichever is the lesser~~

23 ~~(b) for a certificate of environmental compatibility
24 and public need or a certificate of environmental
25 compatibility the fee shall be based upon the estimated~~

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

1 ~~(c) An applicant that has received a certificate of~~
 2 ~~public need is entitled to a credit in the amount paid~~
 3 ~~pursuant to 70-806 (4)(e) when filing an application pursuant~~
 4 ~~to 70-806 (1)(a).~~
 5 ~~(b)(4)(B)~~ The applicant is entitled to an accounting
 6 of moneys expended and to a refund of that portion of the
 7 filing fee not expended by the department in carrying out
 8 its responsibilities under this chapter.
 9 ~~(e)(1)(C)~~ The department may contract with a potential
 10 applicant under this chapter, in advance of the filing of a
 11 formal application, for the development of information or
 12 provision of services required hereunder. Payments made to
 13 the department under such a contract shall be credited
 14 against the fee payable hereunder.
 15 ~~(3)(5)(6)~~ An application shall be accompanied by proof
 16 of service of a copy of the application on the chief
 17 executive officer of each municipality and the head of each
 18 government agency, charged with the duty of protecting the
 19 environment or of planning land use, in the area in which
 20 any portion of the facility is to be located, both as
 21 primarily and as alternatively proposed. The copy of the
 22 application shall be accompanied by a notice specifying the
 23 date on or about which the application is to be filed.
 24 ~~(4)(6)(7)~~ An application shall also be accompanied by
 25 proof that public notice thereof was given to persons,

1 residing in the municipalities entitled to receive notice
2 under subsection ~~(3)(5)~~ of this section, by the publication
3 of a summary of the application, and the date on or about
4 which it is to be filed, in those newspapers as will serve
5 substantially to inform those persons of the application.

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

16 ~~(6)(8)(9)~~ An application for an amendment of an
17 application or a certificate shall be in such form and
18 contain such information as the board by rule or the
19 department by order prescribes. Notice of such an
20 application shall be given as set forth in subsections ~~(3)~~
21 ~~(5)~~ and ~~(4)(6)~~ of this section. If an amendment to an
22 original application would result in a substantial change of
23 the original application, such an amendment shall be
24 considered as a new application and a new filing fee shall
25 be required.*

1 Section 6. 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. ~~(i) (a) Upon receipt of an~~
6 ~~application complying with 70-806(i)(a), the department~~
7 ~~shall commence an intensive study and evaluation of the need~~
8 ~~for the proposed utility facility, generally considering the~~
9 ~~pertinent criteria listed in 70-810 and 70-816, within 15~~
10 ~~months following receipt of the application, the department~~
11 ~~shall make a report to the board, which shall contain the~~
12 ~~department's studies, evaluations, recommendations, and~~
13 ~~other pertinent documents resulting from its study and~~
14 ~~evaluation. An environmental impact statement under the~~
15 ~~Montana Environmental Policy Act is not required under this~~
16 ~~subsection.~~

17 ~~(b) Upon receipt of an application complying with~~
18 ~~70-806(i)(b), the department shall commence an intensive~~
19 ~~study and evaluation of the environmental compatibility of~~
20 ~~the proposed utility facility and its effects, considering~~
21 ~~the pertinent criteria listed in 70-810 and 70-816, within~~
22 ~~20 months following receipt of the application, the~~
23 ~~department shall make a report to the board, which shall~~
24 ~~contain the department's studies, evaluations,~~
25 ~~recommendations, other pertinent documents resulting from~~

~~its study and evaluation, and the environmental impact statement, if any; however, the department is not required to make its report to the board until such time as the applicant's final facility design criteria have been under study and review by the department for at least 1 year.~~

(1)(2)(1) Upon receipt of an application complying with 70-806(1), section 70-806(2), OR 70-806(3), the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all the pertinent criteria listed in sections 70-810 and 70-816. Within two (2) years following receipt of an application for a facility as defined in subsections 70-803(3)(a), and 70-803(3)(d), and (3)(e), AND (3)(F) and for a facility as defined in subsections 70-803 (3)(b) and (c) which is more than thirty (30) miles in length, and within one (1) year for a facility as defined in subsections 70-803 (3)(b) and (c) which is thirty (30) miles or less in length, the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and the final environmental impact statement, if any. 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)(3)(2) The departments of health and environmental sciences, highways, community affairs, fish and game, STATE LANDS, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(3)(4)(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 the facility other than as provided in the alternates set forth in the application.

(4)(5)(4) Upon receipt of the department's report submitted under subsections SUBSECTION (1) and (2) of this section, the board shall set a date for a hearing to begin not more than ~~one-hundred-twenty (120)~~ 90 days after the receipt; except for those hearings involving

1 applications submitted for facilities as defined in section
 2 70-803(3)(b) and (3)(c), certification hearings shall be
 3 conducted by the board in the county seat of Lewis and Clark
 4 County or the county in which the facility, or the greater
 5 portion thereof, is to be located; except that in a hearing
 6 conducted in the county seat of Lewis and Clark County the
 7 board shall provide a reasonable time for conducting a
 8 portion of the hearing in the county in which the facility
 9 or the greater portion thereof is to be located, if
 10 requested by 25 OR MORE persons in the affected area."

11 Section 7. Section 70-808, R.C.M. 1947, is amended to
 12 read as follows:

13 "70-808. Parties to certification proceeding -- waiver
 14 by failure to participate. ~~{1}--The parties to a~~
 15 ~~certification proceeding include:~~

16 ~~{a}--the applicant;~~

17 ~~{b}--each municipality and government agency entitled~~
 18 ~~to receive service of a copy of the application under~~
 19 ~~subsection 70-806(3);~~

20 ~~{c}--any person residing in a municipality entitled to~~
 21 ~~receive service of a copy of the application under~~
 22 ~~subsection 70-806(4); any nonprofit organization formed in~~
 23 ~~whole or in part to promote conservation or natural beauty~~
 24 ~~to protect the environment, personal health or other~~
 25 ~~biological values, to preserve historical sites, to promote~~

1 ~~consumer interests, to represent commercial and industrial~~
 2 ~~groups, or to promote the orderly development of the areas~~
 3 ~~in which the facility is to be located, or any other~~
 4 ~~interested person; and~~

5 ~~{d}--the department;~~

6 {1} Any person may be a party to any hearing under
 7 this chapter BY FOLLOWING THE PROCEDURE ESTABLISHED IN
 8 SUBSECTION (2).

9 {2} Any party PERSON MAY BECOME A PARTY BY FILING
 10 WITHIN 60 DAYS OF THE DEPARTMENT'S REPORT TO THE BOARD
 11 PURSUANT TO 70-807(1), A WRITTEN DESIGNATION SETTING FORTH
 12 HIS NAME, ADDRESS, HOME AND BUSINESS PHONES, AND POSITION
 13 TOWARDS THE PROPOSED FACILITY AND BY PARTICIPATING ORALLY AT
 14 THE HEARING, identified in subparagraphs (b) and (c) of
 15 subsection (1) of this section. A PERSON waives his right to
 16 be a party if he does not FILE THE WRITTEN DESIGNATION AND
 17 participate orally at the a hearing before the board."

18 Section 6. Section 70-809, R.C.M. 1947, is amended to
 19 read as follows:

20 "70-809. Record of hearing -- procedure -- rules of
 21 evidence -- burden of proof. {1} Any studies,
 22 investigations, reports, or other documentary evidence,
 23 including those prepared by the department, which any party
 24 wishes the board to consider or which the board itself
 25 expects to utilize or rely upon, shall be made a part of the

1 record; a record shall be made of the hearing and of all
2 testimony taken; and the contested case procedures of the
3 Montana Administrative Procedure Act (Title 82, chapter 42,
4 R.C.M. 1947) shall apply to the hearing, except that
5 neither common law nor statutory rules of evidence need
6 apply, but the board may ~~shall~~ make rules designed to
7 exclude repetitive, redundant or irrelevant testimony.

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

12 (3) If the board appoints a hearing examiner to
13 conduct any certification proceedings under this chapter,
14 the hearing examiner may not be a member of the board or an
15 employee of the department. The hearing examiner shall issue
16 proposed findings of fact, conclusions of law, an opinion, a
17 decision, and a certificate."

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. (1) Within ~~ninety--(90)~~
22 days 2 months after the ~~last-day~~ commencement of the
23 hearing, the board shall make complete findings, issue an
24 opinion, and render a decision upon the record, either
25 granting or denying the application as filed, or granting it

1 upon such terms, conditions, or modifications of the
2 construction, operation or maintenance of the facility as
3 the board considers appropriate; ~~except that the board, upon~~
4 clear and convincing showing of good cause, may extend the
5 time, NOT TO EXCEED 30 DAYS AT A TIME, for making a final
6 decision.

7 (2) The board may not grant a certificate of
8 environmental compatibility and public need either as
9 proposed by the applicant or as modified by the board unless
10 it ~~shall find~~ finds and ~~determine~~ determines:

11 (a) ~~the basis of the~~ WHETHER THERE IS A need for the
12 facility; IN FINDING AND DETERMINING WHETHER THERE IS A NEED
13 FOR A PROPOSED UTILITY FACILITY AS DEFINED IN 70-803(3)(A),
14 THE BOARD MUST FIND AND DETERMINE THAT NOT MORE THAN 20% OF
15 THE NET ENERGY FORM PRODUCED BY THE PROPOSED UTILITY
16 FACILITY OVER A PERIOD EXTENDING THROUGH THE 20TH YEAR FROM
17 THE DATE OF APPLICATION WILL BE SOLD TO CUSTOMERS OUTSIDE
18 MONTANA; PROVIDED, HOWEVER, THAT IF 20% OR MORE OF THE
19 APPLICANT'S AVERAGE ANNUAL SALES OF EITHER ELECTRICITY OR
20 PIPELINE GAS FOR ITS ENTIRE SERVICE AREA AT THE TIME OF THE
21 FILING OF THE APPLICATION IS FOR CUSTOMERS WITHIN MONTANA,
22 THEN THE BOARD MAY CONSIDER THE APPLICANT'S ENTIRE SERVICE
23 AREA IN FINDING AND DETERMINING WHETHER THERE IS A NEED FOR
24 THE PROPOSED UTILITY FACILITY;

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

1 (c) that the facility represents the minimum adverse
 2 environmental impact, considering the state of available
 3 technology and the nature and economics of the various
 4 alternatives;

5 (d) ~~THAT~~ each of the PERTINENT criteria listed in
 6 section 70-816 ARE SATISFIED;

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

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

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

1 (h) that duly authorized state air and water quality
 2 agencies have certified that the proposed facility will not
 3 violate state and federally established standards and
 4 implementation plans; the judgments of duly authorized air
 5 and water quality agencies are conclusive on all questions
 6 related to the satisfaction of state and federal air and
 7 water quality standards.

8 ~~(3) The board may not grant a certificate of public~~
 9 ~~need either as proposed by the applicant or as modified by~~
 10 ~~the board unless it finds and determines:~~

- 11 ~~(a) the need for the facility;~~
- 12 ~~(b) the general nature of the probable environmental~~
 13 ~~impact considering the type and location of the facility;~~
- 14 ~~(c) that the site location and type of the facility~~
 15 ~~generally represent less environmental impact than other~~
 16 ~~sites and types considering the state of available~~
 17 ~~technology and the nature and economics of the various~~
 18 ~~alternatives;~~

- 19 ~~(d) the pertinent criteria listed in 70-816 and~~
- 20 ~~(e) that the location of the facility as proposed~~
 21 ~~conforms to applicable state and local laws and regulations~~
 22 ~~issued thereunder, except that the board may refuse to apply~~
 23 ~~any local law or regulation if it finds that, as applied to~~
 24 ~~the proposed facility, the law or regulation is unreasonably~~
 25 ~~restrictive in view of the existing technology, of factors~~

1 ~~of cost or economics, or of the needs of consumers, whether~~
 2 ~~located inside or outside of the directly affected~~
 3 ~~government subdivisions.~~

4 ~~(4) The board may not grant either a certificate of~~
 5 ~~environmental compatibility for a facility other than a~~
 6 ~~utility facility or a certificate of environmental~~
 7 ~~compatibility with respect to a utility facility for which a~~
 8 ~~certificate of public need has been issued either as~~
 9 ~~proposed by the applicant or as modified by the board unless~~
 10 ~~it finds and determines all the criteria listed in~~
 11 ~~70-810(2), except that the board may not find and determine~~
 12 ~~the basis of the need for the facility. THE BOARD MAY NOT~~
 13 ~~GRANT A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY FOR A~~
 14 ~~FACILITY OTHER THAN A UTILITY FACILITY EITHER AS PROPOSED BY~~
 15 ~~THE APPLICANT OR AS MODIFIED BY THE BOARD UNLESS IT FINDS~~
 16 ~~AND DETERMINES THAT ALL THE CONDITIONS LISTED IN 70-810(2)~~
 17 ~~HAVE BEEN MET, EXCEPT THAT THE NEED FOR THE FACILITY IS NOT~~
 18 ~~A REQUIREMENT.~~

19 ~~(2)(5)(4) If the board determines that the location of~~
 20 ~~all or a part of the proposed facility should be modified,~~
 21 ~~it may condition its certificate upon such modification,~~
 22 ~~provided that the municipalities, and persons residing~~
 23 ~~therein, affected by the modification, have been given~~
 24 ~~reasonable notice of the modification.~~

25 ~~(3)(6)(5) In determining that the facility will serve~~

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

- 4 (i) the items listed in subsections ~~(1)(a)~~ through
- 5 ~~and (2)(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 public
- 11 health, welfare, and safety;
- 12 (v) any other factors that it considers relevant.

13 ~~(4)(7)(6) Considerations of need, public need, or~~
 14 ~~public convenience and necessity, and demonstration thereof~~
 15 ~~by the applicant, shall apply only to utility facilities.~~

16 ~~(7) WITHIN 90 DAYS AFTER THE BOARD RECEIVES ANY DATA~~
 17 ~~OR INFORMATION FROM THE APPLICANT SUBMITTED PURSUANT TO ANY~~
 18 ~~CONDITIONS IN A CERTIFICATE UNDER THIS SUBSECTION, THE BOARD~~
 19 ~~SHALL TAKE ANY ACTION NECESSARY ON THE DATA AND INFORMATION~~
 20 ~~SUBMITTED BY THE APPLICANT."~~

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

23 "70-811. Opinion issued with decision -- contents of
 24 certificate -- waiver of time requirements -- facilities for
 25 which certificate required. (1) In rendering a decision on

1 an application for a certificate, the board shall issue an
 2 opinion stating its reasons for the action taken. If the
 3 board has found that any regional or local law or
 4 regulation, which would be otherwise applicable, is
 5 unreasonably restrictive pursuant to subsection
 6 70-810~~(1)(2)(f)~~, it shall state in its opinion the reasons
 7 therefor.

8 ~~(2) A certificate of public need issued by the board~~
 9 ~~shall include the following:~~

10 ~~(a) a public need statement related to the facility~~
 11 ~~being certified which includes but is not limited to~~
 12 ~~analysis of the following information:~~

- 13 ~~(i) the need for the facility;~~
- 14 ~~(ii) problems and objections raised by federal and~~
 15 ~~state agencies and groups; and~~
- 16 ~~(iii) alternatives to the proposed facility; and~~

17 ~~(b) a statement signed by the applicant stating an~~
 18 ~~intention to file an application for a certificate of~~
 19 ~~environmental compatibility, stating the date upon which the~~
 20 ~~applicant intends to file and stating agreement to comply~~
 21 ~~with the conditions of the certificate;~~

22 ~~(2)(3)(2) Any certificate~~ All other certificates ANY
 23 CERTIFICATE issued by the board shall include the following:

24 (c) An environmental evaluation statement related to
 25 the facility being certified. The statement shall include,

1 out not be limited to, analysis of the following
 2 information:

- 3 (i) the environmental impact of the proposed facility;
- 4 (ii) any adverse environmental effects which cannot be
 5 avoided by issuance of the certificate;
- 6 (iii) problems and objections raised by other federal
 7 and state agencies and interested groups;
- 8 (iv) alternatives to the proposed facility; and
- 9 ~~(v) a plan for monitoring environmental effects of the~~
 10 ~~proposed facility;~~

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

14 ~~(3)(4)(3)~~ Any of the provisions described in sections
 15 70-807 through 70-811 may be waived by the board, for good
 16 cause shown, with respect to applications filed before
 17 January 1, 1975. Applications for certificates under this
 18 subsection must be promptly filed.

19 ~~(4)(5)(4)~~ (a) The board may waive compliance with any
 20 of the provisions of sections 70-807 through 70-811 if the
 21 applicant for a certificate of ENVIRONMENTAL COMPATIBILITY
 22 AND public need makes a clear and convincing showing to the
 23 board at a public hearing that an immediate, urgent need for
 24 a facility exists and that the applicant did not have
 25 knowledge that the need for the facility existed

1 sufficiently in advance to fully comply with the provisions
 2 of sections 70-807 through 70-811.

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

13 SECTION 11. SECTION 70-815, R.C.M. 1947, IS AMENDED TO
 14 READ AS FOLLOWS:

15 "70-815. Study of planned facilities included in
 16 annual long-range report. (1) If a utility or person lists
 17 and identifies a proposed facility in its plan, submitted
 18 pursuant to section 70-814, as one on which construction is
 19 proposed to be commenced within the five (5) year period
 20 following submission of the plan, the department shall
 21 commence examination and evaluation of the proposed site to
 22 determine whether construction of the proposed facility
 23 would unduly impair the environmental values in section
 24 70-816. This study may be continued until such time as a
 25 person files an application for a certificate under section

1 70-806. Information gathered under this section may be used
 2 to support findings and recommendations required for
 3 issuance of a certificate.

4 ~~(2) The department shall review the load growth data~~
 5 ~~and projections submitted in the long-range plans pursuant~~
 6 ~~to 70-814 and shall report on September 1 of each year to~~
 7 ~~the board the department's analysis of the load growth data~~
 8 ~~and projections. The department shall conduct its review of~~
 9 ~~the load growth data and projections in conjunction with~~
 10 ~~each utility submitting a long-range plan pursuant to~~
 11 ~~70-814."~~

12 Section 12. Section 70-820, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-820. Adoption of rules -- monitoring of
 15 facilities. (1) The board may adopt rules implementing the
 16 provisions of this chapter, including, but not limited to,
 17 rules:

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

22 (d) any other rules the board considers necessary to
 23 accomplish the purposes and objectives of this chapter.

24 (2) The board and the department shall monitor the
 25 operations of all certificated facilities, for assuring

1 continuing compliance with this chapter and certificates
2 issued hereunder, and for discovering and preventing
3 noncompliance with this chapter and the certificates.

4 ~~(3) A plan for monitoring the proposed facility shall~~
5 ~~be prepared by the department and approved by the board. The~~
6 ~~preparation of the plan by the department shall be in~~
7 ~~conjunction with duly authorized state city water~~
8 ~~reclamation or other appropriate state agencies and the~~
9 ~~applicant. For facilities defined in 70-803(3)(a), (3)(d)~~
10 ~~and (3)(e), the monitoring plan shall be submitted for the~~
11 ~~board's approval within 6 months after the issuance of the~~
12 ~~certificate for facilities defined in 70-803(3)(b) and~~
13 ~~(3)(c), the monitoring plan shall be submitted for the~~
14 ~~board's approval together with the rights-of-way location~~
15 ~~implementation of the plan shall be funded by the applicant~~
16 ~~and overseen by the department and the appropriate state~~
17 ~~agencies. A PLAN FOR MONITORING THE FACILITY SHALL BE~~
18 ~~SUBMITTED FOR REVIEW FOR ADOPTION OR MODIFICATION BY THE~~
19 ~~BOARD AS FOLLOWS:~~

20 (A) A PLAN FOR MONITORING AIR AND WATER QUALITY SHALL
21 BE PREPARED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
22 SCIENCES IN CONSULTATION WITH THE DEPARTMENT OF NATURAL
23 RESOURCES AND CONSERVATION AND THE APPLICANT;

24 (B) A PLAN FOR MONITORING OTHER ENVIRONMENTAL, SOCIAL
25 AND ECONOMIC PARAMETERS SHALL BE PREPARED BY THE DEPARTMENT

1 ~~IN CONSULTATION WITH THE APPLICANT AND OTHER AFFECTED STATE~~
2 ~~AGENCIES, IN RECOMMENDING A MONITORING PLAN AS PROVIDED IN~~
3 ~~THIS SUBSECTION, THE DEPARTMENT SHALL RECOMMEND, WHERE~~
4 ~~APPROPRIATE, THAT THE STATE AGENCY WITH EXPERTISE IN THE~~
5 ~~AREA OR DISCIPLINE DESCRIBED IN THE PLAN BE RESPONSIBLE FOR~~
6 ~~CONDUCTING THE MONITORING.~~

7 (4) THE MONITORING SHALL BE COORDINATED BY THE
8 DEPARTMENT, AND A REPORT ON ALL MONITORING ACTIVITIES AND
9 RESULTS SHALL BE SUBMITTED TO THE BOARD EVERY TWELVE MONTHS.

10 (5) FOR FACILITIES DEFINED IN 70-803(3)(A), (3)(D),
11 (3)(E) AND (3)(F), THE MONITORING PLANS PROVIDED FOR IN
12 SUBSECTION (3) OF THIS SECTION SHALL BE SUBMITTED FOR THE
13 BOARD'S APPROVAL WITHIN 6 MONTHS AFTER THE ISSUANCE OF A
14 CERTIFICATE.

15 (6) FOR FACILITIES DEFINED IN 70-803(3)(B) AND (3)(C),
16 THE MONITORING PLANS SHALL BE SUBMITTED FOR THE BOARD'S
17 APPROVAL TOGETHER WITH THE CENTERLINE LOCATION OF THE
18 APPROVED FACILITY WITHIN THE APPROVED CORRIDOR.

19 (7) THE PLANS APPROVED BY THE BOARD PURSUANT TO
20 SUBSECTION (3) OF THIS SECTION SHALL BE IMPLEMENTED BY THE
21 APPLICANT AND OVERSEEN BY THE APPROPRIATE STATE AGENCIES
22 PURSUANT TO SUCH RULES AS THE BOARD MAY ADOPT OR BY ORDER
23 REQUIRE.

24 ~~(3)(4)(B)~~ The board shall adopt rules requiring every
25 person who proposes to gather geological data by boring of

1 test holes or other underground exploration, investigation,
2 or experimentation, related to the possible future
3 development of a facility employing geothermal resources, to
4 comply with the following requirements:

- 5 (a) Notify the department of the proposed action;
6 (b) Submit to the department a description of the area
7 involved;
8 (c) Submit to the department a statement of the
9 proposed activities to be conducted and the methods to be
10 utilized;
11 (d) Submit to the department geological data reports
12 at such times as may be required by the rules; and
13 (e) Submit such other information as the board may
14 require in the rules."

15 Section 13. Section 70-821, R.C.M. 1947, is amended to
16 read as follows:

17 "70-821. Penalties for violation of chapter -- civil
18 action by attorney general. (1) Whoever

19 (a) without first obtaining a certificate required
20 under section 70-804, or a waiver thereof under section
21 70-811(4)(5)(b) commences to construct or operate a
22 facility; or

23 (b) having first obtained a certificate, constructs,
24 operates or maintains a facility other than in compliance
25 with the certificate; or

1 (c) violates any other provision of this chapter or
2 any rule or order adopted thereunder, or knowingly submits
3 false ~~or misleading~~ information in any report, 10-year plan
4 or application required by this chapter or rule or order
5 adopted thereunder; or

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

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

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

1 upon a proper showing a permanent or preliminary injunction
2 or temporary restraining order shall be granted without
3 bond. The department shall also enforce this chapter and
4 bring legal actions to accomplish the enforcement through
5 its own legal counsel.

6 (4) All fines and penalties collected shall be
7 deposited in the earmarked revenue fund for the use of the
8 department in administering this chapter."

9 Section 14. There is a new R.C.M. section numbered
10 70-830 that reads as follows:

11 70-830. Siting inventory. ~~By July 1, 1978, the~~
12 ~~department shall propose criteria upon which to establish~~
13 ~~areas of Montana considered unsuitable for the siting of~~
14 ~~facilities defined in 70-803(3)(a). The board shall adopt as~~
15 ~~rules criteria upon which to establish such areas within 6~~
16 ~~months after receiving the department proposals. Upon~~
17 ~~adoption of the criteria as rules the department shall map~~
18 ~~the unsuitable areas of the state based on the established~~
19 ~~criteria. The department shall present the completed map~~
20 ~~delineating areas unsuitable for siting of facilities to the~~
21 ~~board for adoption as rules. Following board adoption of the~~
22 ~~unsuitable area delineation, the department may not accept~~
23 ~~applications for certificates for sites within areas~~
24 ~~designated as unsuitable.~~

25 (1) THE DEPARTMENT SHALL PROPOSE, AND THE BOARD SHALL

1 ADOPT AFTER A HEARING DULY NOTICED AS RULES:

2 (A) CRITERIA UPON WHICH TO ESTABLISH AREAS OF MONTANA
3 CONSIDERED UNSUITABLE FOR THE SITING OF FACILITIES DEFINED
4 IN 70-803(3);

5 (B) CRITERIA TO DEFINE THE CHARACTERISTICS OF
6 PREFERRED SITES TO GUIDE THE SITE SELECTION OF FUTURE
7 APPLICANTS FOR FACILITIES DEFINED IN 70-803(3); AND

8 (C) MAPS DELINEATING AREAS UNSUITABLE FOR SITING OF
9 FACILITIES.

10 (2) THE DEPARTMENT AND THE BOARD SHALL INCORPORATE THE
11 FOLLOWING PROCEDURES AND TIMETABLES IN THE DEVELOPMENT AND
12 ADOPTION OF CRITERIA PRESCRIBED IN SUBSECTION (1).

13 (A) THE DEPARTMENT SHALL PROPOSE TO THE BOARD CRITERIA
14 FOR UNSUITABLE AREAS AND PREFERRED SITES DESCRIBED IN (1)(A)
15 AND (1)(B) ABOVE.

16 (B) BY MARCH 31, 1978, THE BOARD SHALL ADOPT AS RULES
17 CRITERIA UPON WHICH TO ESTABLISH UNSUITABLE AREAS AND
18 PREFERRED SITES.

19 (C) UPON ADOPTION OF THE CRITERIA AS RULES, THE
20 DEPARTMENT SHALL MAP THE UNSUITABLE AREAS BASED ON THE
21 ESTABLISHED CRITERIA. THE DEPARTMENT SHALL PRESENT THE
22 COMPLETED MAP DELINEATING AREAS UNSUITABLE FOR SITING OF
23 FACILITIES TO THE BOARD FOR ADOPTION AS RULES.

24 (D) THE BOARD SHALL ADOPT AS RULES THE MAP DELINEATING
25 UNSUITABLE AREAS FOR FACILITIES SITING BY DECEMBER 31, 1978.

1 ~~(E) THE DEPARTMENT AND THE BOARD SHALL SUBMIT TO THE~~
2 ~~1979 LEGISLATURE THE CRITERIA, FINAL MAPS, AND SITING~~
3 ~~INVENTORY PROCESS, INCLUDING A DESCRIPTION OF THE PUBLIC~~
4 ~~INVOLVEMENT PROGRAM ESTABLISHED IN SUBSECTION (3).~~

5 ~~(3) THE DEPARTMENT AND THE BOARD SHALL ESTABLISH AND~~
6 ~~IMPLEMENT AN INTENSIVE PUBLIC INVOLVEMENT PROGRAM,~~
7 ~~PARTICULARLY ENSURING PUBLIC PARTICIPATION IN THE~~
8 ~~DEVELOPMENT AND ADOPTION OF CRITERIA AND IN ADOPTION OF THE~~
9 ~~FINAL MAPS. NO RULE MAY BE ADOPTED WHICH IS CONTRARY TO~~
10 ~~CREDIBLE EVIDENCE ON THE RECORD OF PUBLIC HEARINGS HELD~~
11 ~~HEREUNDER.~~

12 ~~(4) THE DEPARTMENT SHALL COORDINATE THE SITING~~
13 ~~INVENTORY PROCESS WITH APPROPRIATE FEDERAL, STATE, AND LOCAL~~
14 ~~AGENCIES.~~

15 ~~(5) FOLLOWING BOARD ADOPTION OF THE UNSUITABLE AREA~~
16 ~~DELINEATION, THE DEPARTMENT MAY NOT ACCEPT AN APPLICATION~~
17 ~~FOR A CERTIFICATE WITHIN AREAS DESIGNATED AS UNSUITABLE.~~

18 ~~(6) THE CRITERIA ADOPTED UNDER THIS SECTION MAY BE~~
19 ~~REVIEWED AND AMENDED BY THE BOARD UNDER THE PROVISIONS OF~~
20 ~~THE MONTANA ADMINISTRATIVE PROCEDURES ACT.~~

21 Section 15. There is a new R.C.M. section numbered
22 70-831 that reads as follows:

23 70-831. Forecasting. By July 1, 1979, the department
24 shall devise a methodology for forecasting the demand for
25 energy within the state of Montana and construct forecasts

1 for periods 1 through 5, 10, and 20 years into the future.
2 As used herein the term energy includes but is not limited
3 to electricity and gas. The forecasts shall be updated and
4 publicized annually, ~~BY SEPTEMBER 1 OF EACH YEAR AFTER 1979.~~
5 The department shall use the forecasts in making its
6 recommendations to the board on applications under this
7 chapter. The board shall use the forecasts ~~OF THE DEPARTMENT~~
8 ~~AND OF THE UTILITY~~ in its evaluation of the energy need as
9 required by this chapter.

10 ~~SECTION 16. APPROPRIATION. THERE IS APPROPRIATED FROM~~
11 ~~THE GENERAL FUND RESOURCE INDEMNITY TRUST INTEREST ACCOUNT~~
12 ~~FOR THE BIENNIUM ENDING JUNE 30, 1979, TO THE DEPARTMENT OF~~
13 ~~NATURAL RESOURCES AND CONSERVATION THE SUM OF \$120,000 TO BE~~
14 ~~USED AS FOLLOWS:~~

15 ~~(1) \$60,000 FOR THE BIENNIUM FOR IMPLEMENTATION OF THE~~
16 ~~SITING INVENTORY PRESCRIBED IN [SECTION 13]; AND~~

17 ~~(2) \$60,000 FOR THE FORECASTING OF DEMAND FOR ENERGY~~
18 ~~AS PRESCRIBED IN [SECTION 14].~~

19 Section 17. Repealer. Sections 70-825 through 70-829,
20 R.C.M. 1947, are repealed.

-End-