

1 HOUSE BILL NO. 698
2 INTRODUCED BY H. Vincent

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
5 70-802 AND 70-803, R.C.M. 1947, TO RESTRICT THE CONSTRUCTION
6 OF NEW ENERGY FACILITIES TO THOSE PROVIDING ENERGY PRIMARILY
7 FOR THE PEOPLE OF MONTANA."

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

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

12 "70-802. Policy and legislative findings =
13 prohibition. It is the constitutionally declared policy of
14 this state to maintain and improve a clean and healthful
15 environment for present and future generations; to protect
16 the environmental life support system from degradation and
17 prevent unreasonable depletion and degradation of natural
18 resources; and to provide for administration and enforcement
19 to attain these objectives.

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

1 welfare of the citizens of this state. Therefore, it is
2 necessary to ensure that the location, construction and
3 operation of power and energy conversion facilities will
4 produce minimal adverse effects on the environment and upon
5 the citizens of this state by providing that a power or
6 energy conversion facility may not be constructed or
7 operated within this state without a certificate of
8 environmental compatibility and Montana public need acquired
9 pursuant to this chapter. The legislature further finds that
10 the construction of facilities as defined in this chapter
11 which export more than 10% of their design capacity out of
12 Montana, except on an occasional or emergency basis, is held
13 to be a violation of the constitutional mandate for the
14 maintenance and improvement of a clean and healthful
15 environment and the prevention of unreasonable depletion and
16 degradation of natural resources; therefore, this type of
17 construction is prohibited."

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

20 "70-803. Definitions. In this chapter, unless the
21 context requires otherwise:

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

25 (2) "Board" means the board of natural resources and

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1 conservation provided for in section B2A-1509.

2 (3) "Facility" means:

3 (a) each plant, unit, or other facility and
4 associated facilities, except for oil and gas refineries,

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

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

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

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

24 (v) designed for, or capable of, utilizing, refining,
25 or converting five hundred thousand (500,000) tons of coal

1 per year or more, or any addition thereto having an
2 estimated cost in excess of two hundred fifty thousand
3 dollars (\$250,000);

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

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

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

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

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

1 (5) "Commence to construct" means:

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

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

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

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

23 (6) "Municipality" means any county or municipality
24 within this state.

25 (7) "Person" means any individual, group, firm,

1 partnership, corporation, cooperative, association,
2 government subdivision, government agency, local government,
3 or other organization or entity.

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

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

12 (10) "Addition thereto" means the installation of new
13 machinery and equipment which would significantly change the
14 conditions under which the certificate was issued.

15 ~~(11) The words "need", "public need", and "necessity"~~
16 ~~refer to a requirement that Montana-produced energy be used~~
17 ~~primarily within the state of Montana. When the board~~
18 ~~considers an application for certification in relationship~~
19 ~~to these words, an energy facility fails to meet the~~
20 ~~requirements if more than 10% of the design capacity of the~~
21 ~~facility is dedicated to use outside the state of Montana,~~
22 ~~except on an occasional or emergency basis."~~

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