

1 *Senate* BILL NO. *304*  
 2 INTRODUCED BY *Donde Thissen* *Rep. Manly*  
 3 *STEPHENS*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
 5 MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806,  
 6 70-808, AND 70-811, R.C.M. 1947."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "70-803. Definitions. In this chapter, unless the  
 12 context requires otherwise:

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

16 (2) "Board" means the board of natural resources and  
 17 conservation provided for in section 82A-1509.

18 (3) "Facility" means:

19 (a) each plant, unit, or other facility and  
 20 associated facilities, except for oil and gas refineries ~~and~~  
 21 fertilizer plants,

22 (i) designed for, or capable of, generating fifty (50)  
 23 megawatts of electricity or more, or any addition thereto  
 24 (except pollution control facilities approved by the  
 25 department of health and environmental sciences added to an

1 existing plant) having an estimated cost in excess of two  
 2 hundred fifty thousand dollars (\$250,000), or

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

7 (iii) designed for, or capable of, producing  
 8 twenty-five thousand (25,000) barrels of liquid hydrocarbon  
 9 products per day or more, or any addition thereto having an  
 10 estimated cost in excess of two hundred fifty thousand  
 11 dollars (\$250,000), or

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

16 (v) designed for, or capable of, utilizing, refining,  
 17 or converting five hundred thousand (500,000) tons of coal  
 18 per year or more to produce hydrocarbon products or energy  
 19 in any form for ultimate public use, or any addition thereto  
 20 having an estimated cost in excess of two hundred fifty  
 21 thousand dollars (\$250,000);

22 (b) each electric transmission line and associated  
 23 facilities of a design capacity of more than sixty-nine  
 24 (69) kilovolts, except that the term does not include an  
 25 electric transmission line and associated facilities of a

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1 design capacity of two hundred thirty (230) kilovolts or  
2 less and ten (10) miles or less in length;

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

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

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

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

19 (5) "Commence to construct" means:

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

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

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

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

16 (6) "Municipality" means any county or municipality  
17 within this state.

18 (7) "Person" means any individual, group, firm,  
19 partnership, corporation, cooperative, association,  
20 government subdivision, government agency, local government,  
21 or other organization or entity.

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

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

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

8 Section 2. Section 70-806, R.C.M. 1947, is amended to  
9 read as follows:

10 "70-806. Application for certification -- filing and  
11 contents -- filing fees -- notice of completion of facility  
12 -- further fees -- refund -- proof of service on  
13 municipalities -- amendment of application or certification.

14 (1) (a) An applicant for a certificate shall file with the  
15 department a verified application, in such form as the board  
16 by rule or the department by order prescribes, containing  
17 the following information:

18 (i) a description of the location and of the facility  
19 to be built thereon;

20 (ii) a summary of any studies which have been made of  
21 the environmental impact of the facility;

22 (iii) a statement explaining the need for the facility;

23 (iv) a description of any reasonable alternate location  
24 or locations for the proposed facility, a description of the  
25 comparative merits and detriments of each location

1 submitted, and a statement of the reasons why the primary  
2 proposed location is best suited for the facility; and

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

8 (b) An application may consist of an application for  
9 two (2) or more facilities in combination which are  
10 physically and directly attached to each other and are  
11 operationally a single operating entity.

12 (2) (a) The applicant shall pay to the department a  
13 filing fee with the application, which shall be deposited in  
14 the earmarked revenue fund for the use of the department in  
15 ~~administering preparing the environmental impact studies,~~  
16 ~~evaluations, and statement required by~~ this chapter. This  
17 fee shall be based upon the estimated cost of the facility  
18 according to the declining scale which follows: two  
19 percent (2%) of any estimated cost up to one million  
20 dollars (\$1,000,000); plus one percent (1%) of any estimated  
21 cost over a million dollars and up to twenty million dollars  
22 (\$20,000,000); plus one-half of one percent (0.5%) of any  
23 estimated cost over twenty million dollars (\$20,000,000);  
24 and up to one hundred million dollars (\$100,000,000); plus  
25 one-quarter of one percent (0.25%) of any amount of

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

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

21 (c) The department may contract with a potential  
 22 applicant under this chapter, in advance of the filing of a  
 23 formal application, for the development of information or  
 24 provision of services required hereunder. Payments made to  
 25 the department under such a contract shall be credited

1 against the fee payable hereunder.

2 (3) An application shall be accompanied by proof of  
 3 service of a copy of the application on the chief executive  
 4 officer of each municipality and the head of each government  
 5 agency, charged with the duty of protecting the environment  
 6 or of planning land use, in the area in which any portion of  
 7 the facility is to be located, both as primarily and as  
 8 alternatively proposed. The copy of the application shall be  
 9 accompanied by a notice specifying the date on or about  
 10 which the application is to be filed.

11 (4) An application shall also be accompanied by proof  
 12 that public notice thereof was given to persons, residing in  
 13 the municipalities entitled to receive notice under  
 14 subsection (3) of this section, by the publication of a  
 15 summary of the application, and the date on or about which  
 16 it is to be filed, in those newspapers as will serve  
 17 substantially to inform those persons of the application.

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

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

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

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

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

17 (a) the applicant;

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

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

1 ~~biological values, to preserve historical sites, to promote  
2 consumer interests, to represent commercial and industrial  
3 groups, or to promote the orderly development of the areas  
4 in which the facility is to be located, or any other  
5 interested person, and any other person who can demonstrate  
6 that he will be adversely affected by the application; and~~

7 (d) the department.

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

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

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

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

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

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

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

17 (3) Any of the provisions described in sections 70-807  
 18 through 70-811 may be waived by the board, for good cause  
 19 shown, with respect to applications filed before January 1,  
 20 1975. Applications for certificates under this subsection  
 21 must be promptly filed.

22 (4) (a) The board may waive compliance with any of  
 23 the provisions of sections 70-807 through 70-811 if the  
 24 applicant makes a clear and convincing showing to the board  
 25 at a public hearing that an immediate, urgent need for a

1 facility exists and that the applicant did not have  
 2 knowledge that the need for the facility existed  
 3 sufficiently in advance to fully comply with the provisions  
 4 of sections 70-807 through 70-811.

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

-End-

STATE OF MONTANA

REQUEST NO. 476-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 324 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

**DESCRIPTION OF PROPOSED LEGISLATION:**

An act to revise the Montana major facility siting act.

**ASSUMPTIONS:**

1. The Department of Natural Resource and Conservation is required by law to conduct hearings on all plant siting and power line applications.
2. During the last 3 fiscal years, the Department has expended \$770,000 for hearings on 6 sitings applications (\$750,000 for one hearing and a minimum of \$20,000 total for five).
3. Average cost per hearing has been \$128,833, and the Department will conduct two hearings per year in the next biennium.
4. Senate Bill 324 disallows the use of filing fee monies for conducting certification hearings on proposed facilities. and monitoring completed facilities.

**FISCAL IMPACT:**

The Major Facility Siting Act requires hearings on plant siting applications. Using the above assumption 4, fees currently available to fund required hearings would no longer be available and would have to be funded from some other source (assume the general fund). Assuming assumption 3 is correct, the increased cost to the state general fund will be approximately \$258,000 per year.

Also, assuming that assumption 4 is correct, revenues currently available to monitor completed facilities will no longer be available. No fiscal impact regarding the monitoring responsibility can be estimated.

*Richard L. Tracy for*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77

Approved by Committee  
on Natural Resources

1 *Senate* BILL NO. *324*  
2 INTRODUCED BY *Douglas Thiessen Jeff Marley*  
3 *STEPHENS*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
5 MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806,  
6 70-808, AND 70-811, R.C.M. 1947."

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

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12 context requires otherwise:

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20 associated facilities, except for oil and gas refineries and  
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23 megawatts of electricity or more, or any addition thereto  
24 (except pollution control facilities approved by the  
25 department of health and environmental sciences added to an

1 existing plant) having an estimated cost in excess of two  
2 hundred fifty thousand dollars (\$250,000), or

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4 million (25,000,000) cubic feet of gas per day or more, or  
5 any addition thereto having an estimated cost in excess of  
6 two hundred fifty thousand dollars (\$250,000), or

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8 twenty-five thousand (25,000) barrels of liquid hydrocarbon  
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10 estimated cost in excess of two hundred fifty thousand  
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13 minerals, or any addition thereto having an estimated cost  
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16 (v) designed for, or capable of, utilizing, refining,  
17 or converting five hundred thousand (500,000) tons of coal  
18 per year or more to produce hydrocarbon products or energy  
19 in any form for ultimate public use, or any addition thereto  
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2 less and ten (10) miles or less in length;

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5 hydrocarbon products from or to a facility located within or  
6 without this state of the size indicated in subsection  
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9 of underground space in existence or to be created, for the  
10 creation, use, or conversion of energy;

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13 limited to, transportation links of any kind, aqueducts,  
14 diversion dams, transmission substations, storage ponds,  
15 reservoirs, and any other device or equipment associated  
16 with the production or delivery of the energy form or  
17 product produced by a facility, except that the term does  
18 not include a facility.

19 (5) "Commence to construct" means:

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21 other action that would affect the environment of the site  
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25 borings to ascertain foundation conditions;

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2 means, if such activity is related to the possible future  
3 development of a gasification facility or a facility  
4 employing geothermal resources, but does not include the  
5 gathering of geological data by boring of test holes or  
6 other underground exploration, investigation, or  
7 experimentation;

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

11 (d) the relocation or upgrading of an existing  
12 facility defined by subsection (3)(b) or (c), including  
13 upgrading to a design capacity covered by subsection (3)(b),  
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15 repair of an existing facility.

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17 within this state.

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19 partnership, corporation, cooperative, association,  
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23 of the production, storage, sale, delivery or furnishing of  
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25 any form for ultimate public use.

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

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6 machinery and equipment which would significantly change the  
7 conditions under which the certificate was issued."

8 Section 2. Section 70-806, R.C.M. 1947, is amended to  
9 read as follows:

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11 contents -- filing fees -- notice of completion of facility  
12 -- further fees -- refund -- proof of service on  
13 municipalities -- amendment of application or certification.

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15 department a verified application, in such form as the board  
16 by rule or the department by order prescribes, containing  
17 the following information:

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19 to be built thereon;

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21 the environmental impact of the facility;

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24 or locations for the proposed facility, a description of the  
25 comparative merits and detriments of each location

1 submitted, and a statement of the reasons why the primary  
2 proposed location is best suited for the facility; and

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

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10 physically and directly attached to each other and are  
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18 according to the declining scale which follows: two  
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21 cost over a million dollars and up to twenty million dollars  
22 (\$20,000,000); plus one-half of one percent (0.5%) of any  
23 estimated cost over twenty million dollars (\$20,000,000);  
24 and up to one hundred million dollars (\$100,000,000); plus  
25 one-quarter of one percent (0.25%) of any amount of

1 estimated cost over one hundred million (\$100,000,000) and  
 2 up to three hundred million dollars (\$300,000,000); plus  
 3 one-eighth of one percent (.125%) of any amount of estimated  
 4 cost over three hundred million dollars (\$300,000,000). ~~The~~  
 5 ~~revenues--derived--from--the--filing--fee--shall--be--used--by--the~~  
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 13 ~~facilities--defined--in--70-803--(3)(a),--(d),--and--(e).~~ If an  
 14 application consists of a combination of two (2) or more  
 15 facilities, the filing fee shall be based on the total  
 16 estimated cost of the combined facilities.

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 19 filing fee not expended by the department in carrying out  
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 22 applicant under this chapter, in advance of the filing of a  
 23 formal application, for the development of information or  
 24 provision of services required hereunder. Payments made to  
 25 the department under such a contract shall be credited

1 against the fee payable hereunder.

2 (3) An application shall be accompanied by proof of  
 3 service of a copy of the application on the chief executive  
 4 officer of each municipality and the head of each government  
 5 agency, charged with the duty of protecting the environment  
 6 or of planning land use, in the area in which any portion of  
 7 the facility is to be located, both as primarily and as  
 8 alternatively proposed. The copy of the application shall be  
 9 accompanied by a notice specifying the date on or about  
 10 which the application is to be filed.

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 13 the municipalities entitled to receive notice under  
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 15 summary of the application, and the date on or about which  
 16 it is to be filed, in those newspapers as will serve  
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 19 any of the municipalities, government agencies or persons  
 20 identified in subsections (3) and (4) of this section may be  
 21 cured pursuant to orders of the department designed to  
 22 afford them adequate notice to enable their effective  
 23 participation in the proceeding. In addition, the department  
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8 amendment to an original application would result in a  
9 substantial change of the original application, such an  
10 amendment shall be considered as a new application and a new  
11 filing fee shall be required.\*

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

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

17 (a) the applicant;

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

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

1 ~~biological values to preserve historical sites to promote  
2 consumer interests to represent commercial and industrial  
3 groups or to promote the orderly development of the areas  
4 in which the facility is to be located; or any other  
5 interested person and any other person who can demonstrate  
6 that he will be adversely affected by the application; and~~

7 (d) the department.

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

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

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

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

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

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

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

8 (iii) problems and objections raised by other federal  
9 and state agencies and ~~interested--groups~~ parties to the  
10 proceedings;

11 (iv) alternatives to the proposed facility; and

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

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

17 (3) Any of the provisions described in sections 70-807  
18 through 70-811 may be waived by the board, for good cause  
19 shown, with respect to applications filed before January 1,  
20 1975. Applications for certificates under this subsection  
21 must be promptly filed.

22 (4) (a) The board may waive compliance with any of  
23 the provisions of sections 70-807 through 70-811 if the  
24 applicant makes a clear and convincing showing to the board  
25 at a public hearing that an immediate, urgent need for a

1 facility exists and that the applicant did not have  
2 knowledge that the need for the facility existed  
3 sufficiently in advance to fully comply with the provisions  
4 of sections 70-807 through 70-811.

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

-End-

Approved by Committee  
on Finance & Claims

1 SENATE BILL NO. 324  
2 INTRODUCED BY DUNKLE,  
3 THIESSEN, GALT, MANLEY, STEPHENS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
6 MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806,  
7 70-808, AND 70-811, R.C.M. 1947."

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

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

12 "70-803. Definitions. In this chapter, unless the  
13 context requires otherwise:

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

17 (2) "Board" means the board of natural resources and  
18 conservation provided for in section 82A-1509.

19 (3) "Facility" means:

20 (a) each plant, unit, or other facility and  
21 associated facilities, except for oil and gas refineries and  
22 fertilizer plants,

23 (i) designed for, or capable of, generating fifty (50)  
24 megawatts of electricity or more, or any addition thereto  
25 (except pollution control facilities approved by the

1 department of health and environmental sciences added to an  
2 existing plant) having an estimated cost in excess of two  
3 hundred fifty thousand dollars (\$250,000), or

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

8 (iii) designed for, or capable of, producing  
9 twenty-five thousand (25,000) barrels of liquid hydrocarbon  
10 products per day or more, or any addition thereto having an  
11 estimated cost in excess of two hundred fifty thousand  
12 dollars (\$250,000), or

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

17 (v) designed for, or capable of, utilizing, refining,  
18 or converting five hundred thousand (500,000) tons of coal  
19 per year or more to produce hydrocarbon products or energy  
20 in any form for ultimate public use, or any addition thereto  
21 having an estimated cost in excess of two hundred fifty  
22 thousand dollars (\$250,000);

23 (b) each electric transmission line and associated  
24 facilities of a design capacity of more than sixty-nine  
25 (69) kilovolts, except that the term does not include an

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1 electric transmission line and associated facilities of a  
2 design capacity of two hundred thirty (230) kilovolts or  
3 less and ten (10) miles or less in length;

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

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

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

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

20 (5) "Commence to construct" means:

21 (a) any clearing of land, excavation, construction, or  
22 other action that would affect the environment of the site  
23 or route of a facility, but does not mean changes needed for  
24 temporary use of sites or routes for nonutility purposes, or  
25 uses in securing geological data, including necessary

1 borings to ascertain foundation conditions;

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

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

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

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

19 (7) "Person" means any individual, group, firm,  
20 partnership, corporation, cooperative, association,  
21 government subdivision, government agency, local government,  
22 or other organization or entity.

23 (8) "Utility" means any person engaged in any aspect  
24 of the production, storage, sale, delivery or furnishing of  
25 heat, electricity, gas, hydrocarbon products or energy in

1 any form for ultimate public use.

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

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

9 Section 2. Section 70-806, R.C.M. 1947, is amended to  
10 read as follows:

11 "70-806. Application for certification -- filing and  
12 contents -- filing fees -- notice of completion of facility  
13 -- further fees -- refund -- proof of service on  
14 municipalities -- amendment of application or certification.

15 (1) (a) An applicant for a certificate shall file with the  
16 department a verified application, in such form as the board  
17 by rule or the department by order prescribes, containing  
18 the following information:

19 (i) a description of the location and of the facility  
20 to be built thereon;

21 (ii) a summary of any studies which have been made of  
22 the environmental impact of the facility;

23 (iii) a statement explaining the need for the facility;

24 (iv) a description of any reasonable alternate location  
25 or locations for the proposed facility, a description of the

1 comparative merits and detriments of each location  
2 submitted, and a statement of the reasons why the primary  
3 proposed location is best suited for the facility; and

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

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

13 (2) (a) The applicant shall pay to the department a  
14 filing fee with the application, which shall be deposited in  
15 the earmarked revenue fund for the use of the department in  
16 administering preparing the environmental impact studies,  
17 evaluations, and statement required by this chapter. This  
18 fee shall be based upon the estimated cost of the facility  
19 according to the declining scale which follows: two  
20 percent (2%) of any estimated cost up to one million  
21 dollars (\$1,000,000); plus one percent (1%) of any estimated  
22 cost over a million dollars and up to twenty million dollars  
23 (\$20,000,000); plus one-half of one percent (0.5%) of any  
24 estimated cost over twenty million dollars (\$20,000,000);  
25 and up to one hundred million dollars (\$100,000,000); plus



1 one-quarter of one percent (0.25%) of any amount of  
 2 estimated cost over one hundred million (\$100,000,000) and  
 3 up to three hundred million dollars (\$300,000,000); plus  
 4 one-eighth of one percent (.125%) of any amount of estimated  
 5 cost over three hundred million dollars (\$300,000,000). The  
 6 ~~revenues derived from the filing fee shall be used by the~~  
 7 ~~department in compiling the information required for~~  
 8 ~~rendering a decision on a certificate and for carrying out~~  
 9 ~~its other responsibilities under this chapter with respect~~  
 10 ~~to the facility covered by the certificate for a period not~~  
 11 ~~to exceed five (5) years after the certificate is issued for~~  
 12 ~~facilities defined in 70-803 (3) (b) and (c) or not to~~  
 13 ~~exceed ten (10) years after the certificate is issued for~~  
 14 ~~facilities defined in 70-803 (3)(e), (d), and (e). THE~~  
 15 REVENUES DERIVED FROM THE FILING FEE SHALL BE USED BY THE  
 16 DEPARTMENT IN COMPILING THE INFORMATION REQUIRED FOR  
 17 RENDERING A DECISION ON A CERTIFICATE AND FOR CARRYING OUT  
 18 ITS OTHER RESPONSIBILITIES UNDER THIS CHAPTER. If an  
 19 application consists of a combination of two (2) or more  
 20 facilities, the filing fee shall be based on the total  
 21 estimated cost of the combined facilities.

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

1 (c) The department may contract with a potential  
 2 applicant under this chapter, in advance of the filing of a  
 3 formal application, for the development of information or  
 4 provision of services required hereunder. Payments made to  
 5 the department under such a contract shall be credited  
 6 against the fee payable hereunder.

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

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

23 (5) Inadvertent failure of service on, or notice to,  
 24 any of the municipalities, government agencies or persons  
 25 identified in subsections (3) and (4) of this section may be

1 cured pursuant to orders of the department designed to  
2 afford them adequate notice to enable their effective  
3 participation in the proceeding. In addition, the department  
4 may, after filing, require the applicant to serve notice of  
5 the application or copies thereof or both upon such other  
6 persons, and file proof thereof, as the department may deem  
7 appropriate.

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

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

19 \*70-808. Parties to certification proceeding -- waiver  
20 by failure to participate. (1) ~~The parties to a~~  
21 ~~certification proceeding include:~~

22 ~~(a) the applicant;~~

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

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

12 ~~(d) the department.~~

13 (2) ~~Any party identified in subparagraphs (b) and (c)~~  
14 ~~of subsection (1) of this section waives his right to be a~~  
15 ~~party if he does not participate orally at the hearing~~  
16 ~~before the board. ANY PERSON MAY BE A PARTY TO ANY HEARING~~  
17 ~~UNDER THIS CHAPTER BY FOLLOWING THE PROCEDURE ESTABLISHED IN~~  
18 ~~SUBSECTION (2).~~

19 (2) ANY PERSON MAY BECOME A PARTY BY FILING WITHIN 60  
20 DAYS OF THE DEPARTMENT'S REPORT TO THE BOARD PURSUANT TO  
21 70-807(1), A WRITTEN DESIGNATION SETTING FORTH HIS NAME,  
22 ADDRESS, HOME AND BUSINESS PHONES, AND POSITION TOWARDS THE  
23 PROPOSED FACILITY AND BY PARTICIPATING ORALLY AT THE  
24 HEARING. A PERSON WAIVES HIS RIGHT TO BE A PARTY IF HE DOES  
25 NOT FILE THE WRITTEN DESIGNATION AND PARTICIPATE ORALLY AT

1 THE HEARING.

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

4 "70-811. Opinion issued with decision -- contents of  
5 certificate -- waiver of time requirements -- facilities for  
6 which certificate required. (1) In rendering a decision on  
7 an application for a certificate, the board shall issue an  
8 opinion stating its reasons for the action taken. If the  
9 board has found that any regional or local law or  
10 regulation, which would be otherwise applicable, is  
11 unreasonably restrictive pursuant to subsection  
12 70-810(1)(f), it shall state in its opinion the reasons  
13 therefor.

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

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

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

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

23 (iii) problems and objections raised by other federal  
24 and state agencies and ~~interested--groups~~ parties to the  
25 proceedings;

1 (iv) alternatives to the proposed facility; and

2 (v) a plan for monitoring environmental effects of the  
3 proposed facility.

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

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

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

20 (b) The board may waive compliance with any of the  
21 provisions of this chapter upon receipt of notice by a  
22 utility or person subject to this chapter that a facility or  
23 associated facility has been damaged or destroyed as a  
24 result of fire, flood or other natural disaster or as the  
25 result of insurrection, war or other civil disorder, and

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1 there exists an immediate need for construction of a new  
2 facility or associated facility or the relocation of a  
3 previously existing facility or associated facility in order  
4 to promote the public welfare."

-End-

1 SENATE BILL NO. 324

2 INTRODUCED BY DUNKLE,

3 THIESSEN, GALT, MANLEY, STEPHENS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
6 MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806,  
7 70-808, AND 70-811, R.C.M. 1947."

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

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

12 "70-803. Definitions. In this chapter, unless the  
13 context requires otherwise:

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

17 (2) "Board" means the board of natural resources and  
18 conservation provided for in section 82A-1509.

19 (3) "Facility" means:

20 (a) each plant, unit, or other facility and  
21 associated facilities, except for oil and gas refineries and  
22 fertilizer plants,

23 (i) designed for, or capable of, generating fifty (50)  
24 megawatts of electricity or more, or any addition thereto  
25 [except pollution control facilities approved by the

1 department of health and environmental sciences added to an  
2 existing plant) having an estimated cost in excess of two  
3 hundred fifty thousand dollars (\$250,000), or

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

8 (iii) designed for, or capable of, producing  
9 twenty-five thousand (25,000) barrels of liquid hydrocarbon  
10 products per day or more, or any addition thereto having an  
11 estimated cost in excess of two hundred fifty thousand  
12 dollars (\$250,000), or

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

17 (v) designed for, or capable of, utilizing, refining,  
18 or converting five hundred thousand (500,000) tons of coal  
19 per year or more to produce hydrocarbon products or energy  
20 in any form for ultimate public use, or any addition thereto  
21 having an estimated cost in excess of two hundred fifty  
22 thousand dollars (\$250,000);

23 (b) each electric transmission line and associated  
24 facilities of a design capacity of more than sixty-nine  
25 (69) kilovolts, except that the term does not include an

1 electric transmission line and associated facilities of a  
2 design capacity of two hundred thirty (230) kilovolts or  
3 less and ten (10) miles or less in length;

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

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

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

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

20 (5) "Commence to construct" means:

21 (a) any clearing of land, excavation, construction, or  
22 other action that would affect the environment of the site  
23 or route of a facility, but does not mean changes needed for  
24 temporary use of sites or routes for nonutility purposes, or  
25 uses in securing geological data, including necessary

1 borings to ascertain foundation conditions;

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

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

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

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

19 (7) "Person" means any individual, group, firm,  
20 partnership, corporation, cooperative, association,  
21 government subdivision, government agency, local government,  
22 or other organization or entity.

23 (8) "Utility" means any person engaged in any aspect  
24 of the production, storage, sale, delivery or furnishing of  
25 heat, electricity, gas, hydrocarbon products or energy in

1 any form for ultimate public use.

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

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

9 Section 2. Section 70-806, R.C.M. 1947, is amended to  
10 read as follows:

11 "70-806. Application for certification -- filing and  
12 contents -- filing fees -- notice of completion of facility  
13 -- further fees -- refund -- proof of service on  
14 municipalities -- amendment of application or certification.

15 (1) (a) An applicant for a certificate shall file with the  
16 department a verified application, in such form as the board  
17 by rule or the department by order prescribes, containing  
18 the following information:

19 (i) a description of the location and of the facility  
20 to be built thereon;

21 (ii) a summary of any studies which have been made of  
22 the environmental impact of the facility;

23 (iii) a statement explaining the need for the facility;

24 (iv) a description of any reasonable alternate location  
25 or locations for the proposed facility, a description of the

1 comparative merits and detriments of each location  
2 submitted, and a statement of the reasons why the primary  
3 proposed location is best suited for the facility; and

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

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

13 (2) (a) The applicant shall pay to the department a  
14 filing fee with the application, which shall be deposited in  
15 the earmarked revenue fund for the use of the department in  
16 ~~administering preparing the environmental impact studies,~~  
17 ~~evaluations, and statement required by~~ this chapter. This  
18 fee shall be based upon the estimated cost of the facility  
19 according to the declining scale which follows: two  
20 percent (2%) of any estimated cost up to one million  
21 dollars (\$1,000,000); plus one percent (1%) of any estimated  
22 cost over a million dollars and up to twenty million dollars  
23 (\$20,000,000); plus one-half of one percent (0.5%) of any  
24 estimated cost over twenty million dollars (\$20,000,000);  
25 and up to one hundred million dollars (\$100,000,000); plus

1 one-quarter of one percent (0.25%) of any amount of  
 2 estimated cost over one hundred million (\$100,000,000) and  
 3 up to three hundred million dollars (\$300,000,000); plus  
 4 one-eighth of one percent (.125%) of any amount of estimated  
 5 cost over three hundred million dollars (\$300,000,000). ~~The~~  
 6 ~~revenues derived from the filing fee shall be used by the~~  
 7 ~~department in compiling the information required for~~  
 8 ~~rendering a decision on a certificate and for carrying out~~  
 9 ~~its other responsibilities under this chapter with respect~~  
 10 ~~to the facility covered by the certificate for a period not~~  
 11 ~~to exceed five (5) years after the certificate is issued for~~  
 12 ~~facilities defined in 70-803 (3) (b) and (c) or not to~~  
 13 ~~exceed ten (10) years after the certificate is issued for~~  
 14 ~~facilities defined in 70-803 (3)(d), (d), and (e). THE~~  
 15 REVENUES DERIVED FROM THE FILING FEE SHALL BE USED BY THE  
 16 DEPARTMENT IN COMPILING THE INFORMATION REQUIRED FOR  
 17 RENDERING A DECISION ON A CERTIFICATE AND FOR CARRYING OUT  
 18 ITS OTHER RESPONSIBILITIES UNDER THIS CHAPTER. If an  
 19 application consists of a combination of two (2) or more  
 20 facilities, the filing fee shall be based on the total  
 21 estimated cost of the combined facilities.

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

1 (c) The department may contract with a potential  
 2 applicant under this chapter, in advance of the filing of a  
 3 formal application, for the development of information or  
 4 provision of services required hereunder. Payments made to  
 5 the department under such a contract shall be credited  
 6 against the fee payable hereunder.

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

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

23 (5) Inadvertent failure of service on, or notice to,  
 24 any of the municipalities, government agencies or persons  
 25 identified in subsections (3) and (4) of this section may be



1 cured pursuant to orders of the department designed to  
2 afford them adequate notice to enable their effective  
3 participation in the proceeding. In addition, the department  
4 may, after filing, require the applicant to serve notice of  
5 the application or copies thereof or both upon such other  
6 persons, and file proof thereof, as the department may deem  
7 appropriate.

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

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

19 "70-808. Parties to certification proceeding -- waiver  
20 by failure to participate. (1) ~~The parties to a~~  
21 ~~certification proceeding include:~~

- 22 ~~(a) the applicant;~~
- 23 ~~(b) each municipality and government agency entitled~~
- 24 ~~to receive service of a copy of the application under~~
- 25 ~~subsection 70-806(3);~~

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

12 ~~(d) the department;~~

13 ~~(2) Any party identified in subparagraphs (b) and (c)~~  
14 ~~of subsection (1) of this section waives his right to be a~~  
15 ~~party if he does not participate orally at the hearing~~  
16 ~~before the board. ANY PERSON MAY BE A PARTY TO ANY HEARING~~  
17 ~~UNDER THIS CHAPTER BY FOLLOWING THE PROCEDURE ESTABLISHED IN~~  
18 ~~SUBSECTION (2).~~

19 (2) ANY PERSON MAY BECOME A PARTY BY FILING WITHIN 60  
20 DAYS OF THE DEPARTMENT'S REPORT TO THE BOARD PURSUANT TO  
21 70-807(1), A WRITTEN DESIGNATION SETTING FORTH HIS NAME,  
22 ADDRESS, HOME AND BUSINESS PHONES, AND POSITION TOWARDS THE  
23 PROPOSED FACILITY AND BY PARTICIPATING ORALLY AT THE  
24 HEARING. A PERSON WAIVES HIS RIGHT TO BE A PARTY IF HE DOES  
25 NOT FILE THE WRITTEN DESIGNATION AND PARTICIPATE ORALLY AT

1 THE HEARING.

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

4 "70-811. Opinion issued with decision -- contents of  
5 certificate -- waiver of time requirements -- facilities for  
6 which certificate required. (1) In rendering a decision on  
7 an application for a certificate, the board shall issue an  
8 opinion stating its reasons for the action taken. If the  
9 board has found that any regional or local law or  
10 regulation, which would be otherwise applicable, is  
11 unreasonably restrictive pursuant to subsection  
12 70-810(1)(f), it shall state in its opinion the reasons  
13 therefor.

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

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

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

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

23 (iii) problems and objections raised by other federal  
24 and state agencies and ~~interested~~ groups parties to the  
25 proceedings;

1 (iv) alternatives to the proposed facility; and

2 (v) a plan for monitoring environmental effects of the  
3 proposed facility.

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

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

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

20 (b) The board may waive compliance with any of the  
21 provisions of this chapter upon receipt of notice by a  
22 utility or person subject to this chapter that a facility or  
23 associated facility has been damaged or destroyed as a  
24 result of fire, flood or other natural disaster or as the  
25 result of insurrection, war or other civil disorder, and

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1 there exists an immediate need for construction of a new  
2 facility or associated facility or the relocation of a  
3 previously existing facility or associated facility in order  
4 to promote the public welfare."

-End-

HOUSE OF REPRESENTATIVES

April 5, 1977

HOUSE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL 324

1. Amend page 1, section 1, lines 21 and 22.

Following: "refineries"

Strike: "and fertilizer plants"

2. Amend page 2, section 1, lines 19 and 20.

Following: "more"

Strike: "to produce hydrocarbon products or energy in any form for ultimate public use"

AS AMENDED BE NOT CONCURRED IN

## 1 SENATE BILL NO. 324

2 INTRODUCED BY DUNKLE,

3 THIESSEN, GALT, MANLEY, STEPHENS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
6 MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806,  
7 70-808, AND 70-811, R.C.M. 1947."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:10 Section 1. Section 70-803, R.C.M. 1947, is amended to  
11 read as follows:12 "70-803. Definitions. In this chapter, unless the  
13 context requires otherwise:14 (1) "Department" means the department of natural  
15 resources and conservation provided for in Title 82A,  
16 chapter 15.17 (2) "Board" means the board of natural resources and  
18 conservation provided for in section 82A-1509.

19 (3) "Facility" means:

20 (a) each plant, unit, or other facility and  
21 associated facilities, except for oil and gas refineries ~~and~~  
22 ~~fertilizer plants,~~23 (i) designed for, or capable of, generating fifty (50)  
24 megawatts of electricity or more, or any addition thereto  
25 (except pollution control facilities approved by the1 department of health and environmental sciences added to an  
2 existing plant) having an estimated cost in excess of two  
3 hundred fifty thousand dollars (\$250,000), or4 (ii) designed for, or capable of, producing twenty-five  
5 million (25,000,000) cubic feet of gas per day or more, or  
6 any addition thereto having an estimated cost in excess of  
7 two hundred fifty thousand dollars (\$250,000), or8 (iii) designed for, or capable of, producing  
9 twenty-five thousand (25,000) barrels of liquid hydrocarbon  
10 products per day or more, or any addition thereto having an  
11 estimated cost in excess of two hundred fifty thousand  
12 dollars (\$250,000), or13 (iv) designed for, or capable of, enriching uranium  
14 minerals, or any addition thereto having an estimated cost  
15 in excess of two hundred fifty thousand dollars (\$250,000),  
16 or17 (v) designed for, or capable of, utilizing, refining,  
18 or converting five hundred thousand (500,000) tons of coal  
19 per year or more ~~to produce hydrocarbon products or energy~~  
20 ~~in any form for ultimate public use,~~ or any addition thereto  
21 having an estimated cost in excess of two hundred fifty  
22 thousand dollars (\$250,000);23 (b) each electric transmission line and associated  
24 facilities of a design capacity of more than sixty-nine  
25 (69) kilovolts, except that the term does not include an

1 electric transmission line and associated facilities of a  
2 design capacity of two hundred thirty (230) kilovolts or  
3 less and ten (10) miles or less in length;

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

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

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

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

20 (5) "Commence to construct" means:

21 (a) any clearing of land, excavation, construction, or  
22 other action that would affect the environment of the site  
23 or route of a facility, but does not mean changes needed for  
24 temporary use of sites or routes for nonutility purposes, or  
25 uses in securing geological data, including necessary

1 borings to ascertain foundation conditions;

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

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

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

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

19 (7) "Person" means any individual, group, firm,  
20 partnership, corporation, cooperative, association,  
21 government subdivision, government agency, local government,  
22 or other organization or entity.

23 (8) "Utility" means any person engaged in any aspect  
24 of the production, storage, sale, delivery or furnishing of  
25 heat, electricity, gas, hydrocarbon products or energy in

1 any form for ultimate public use.

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

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

9 Section 2. Section 70-806, R.C.M. 1947, is amended to  
10 read as follows:

11 "70-806. Application for certification -- filing and  
12 contents -- filing fees -- notice of completion of facility  
13 -- further fees -- refund -- proof of service on  
14 municipalities -- amendment of application or certification.

15 (1) (a) An applicant for a certificate shall file with the  
16 department a verified application, in such form as the board  
17 by rule or the department by order prescribes, containing  
18 the following information:

19 (i) a description of the location and of the facility  
20 to be built thereon;

21 (ii) a summary of any studies which have been made of  
22 the environmental impact of the facility;

23 (iii) a statement explaining the need for the facility;

24 (iv) a description of any reasonable alternate location  
25 or locations for the proposed facility, a description of the

1 comparative merits and detriments of each location  
2 submitted, and a statement of the reasons why the primary  
3 proposed location is best suited for the facility; and

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

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

13 (2) (a) The applicant shall pay to the department a  
14 filing fee with the application, which shall be deposited in  
15 the earmarked revenue fund for the use of the department in  
16 ~~administering preparing the environmental impact studies,~~  
17 ~~evaluations, and statement required by~~ this chapter. This  
18 fee shall be based upon the estimated cost of the facility  
19 according to the declining scale which follows: two  
20 percent (2%) of any estimated cost up to one million  
21 dollars (\$1,000,000); plus one percent (1%) of any estimated  
22 cost over a million dollars and up to twenty million dollars  
23 (\$20,000,000); plus one-half of one percent (0.5%) of any  
24 estimated cost over twenty million dollars (\$20,000,000);  
25 and up to one hundred million dollars (\$100,000,000); plus

1 one-quarter of one percent (0.25%) of any amount of  
 2 estimated cost over one hundred million (\$100,000,000) and  
 3 up to three hundred million dollars (\$300,000,000); plus  
 4 one-eighth of one percent (.125%) of any amount of estimated  
 5 cost over three hundred million dollars (\$300,000,000). The  
 6 ~~revenues derived from the filing fee shall be used by the~~  
 7 ~~department in compiling the information required for~~  
 8 ~~rendering a decision on a certificate and for carrying out~~  
 9 ~~its other responsibilities under this chapter with respect~~  
 10 ~~to the facility covered by the certificate for a period not~~  
 11 ~~to exceed five (5) years after the certificate is issued for~~  
 12 ~~facilities defined in 70-803 (3) (b) and (c) or not to~~  
 13 ~~exceed ten (10) years after the certificate is issued for~~  
 14 ~~facilities defined in 70-803 (3) (a), (d), and (e). THE~~  
 15 REVENUES DERIVED FROM THE FILING FEE SHALL BE USED BY THE  
 16 DEPARTMENT IN COMPILING THE INFORMATION REQUIRED FOR  
 17 RENDERING A DECISION ON A CERTIFICATE AND FOR CARRYING OUT  
 18 ITS OTHER RESPONSIBILITIES UNDER THIS CHAPTER. If an  
 19 application consists of a combination of two (2) or more  
 20 facilities, the filing fee shall be based on the total  
 21 estimated cost of the combined facilities.

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

1 (c) The department may contract with a potential  
 2 applicant under this chapter, in advance of the filing of a  
 3 formal application, for the development of information or  
 4 provision of services required hereunder. Payments made to  
 5 the department under such a contract shall be credited  
 6 against the fee payable hereunder.

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

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

23 (5) Inadvertent failure of service on, or notice to,  
 24 any of the municipalities, government agencies or persons  
 25 identified in subsections (3) and (4) of this section may be



1 cured pursuant to orders of the department designed to  
 2 afford them adequate notice to enable their effective  
 3 participation in the proceeding. In addition, the department  
 4 may, after filing, require the applicant to serve notice of  
 5 the application or copies thereof or both upon such other  
 6 persons, and file proof thereof, as the department may deem  
 7 appropriate.

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

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

19 "70-808. Parties to certification proceeding -- waiver  
 20 by failure to participate. (1) ~~The parties to a~~  
 21 ~~certification proceeding include:~~

22 ~~(a) the applicant;~~

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

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

12 ~~(d) the department.~~

13 ~~(2) Any party identified in subparagraphs (b) and (c)~~  
 14 ~~of subsection (1) of this section waives his right to be a~~  
 15 ~~party if he does not participate orally at the hearing~~  
 16 ~~before the board. ANY PERSON MAY BE A PARTY TO ANY HEARING~~  
 17 ~~UNDER THIS CHAPTER BY FOLLOWING THE PROCEDURE ESTABLISHED IN~~  
 18 ~~SUBSECTION (2).~~

19 ~~(2) ANY PERSON MAY BECOME A PARTY BY FILING WITHIN 60~~  
 20 ~~DAYS OF THE DEPARTMENT'S REPORT TO THE BOARD PURSUANT TO~~  
 21 ~~70-807(1), A WRITTEN DESIGNATION SETTING FORTH HIS NAME,~~  
 22 ~~ADDRESS, HOME AND BUSINESS PHONES, AND POSITION TOWARDS THE~~  
 23 ~~PROPOSED FACILITY AND BY PARTICIPATING ORALLY AT THE~~  
 24 ~~HEARING. A PERSON WAIVES HIS RIGHT TO BE A PARTY IF HE DOES~~  
 25 ~~NOT FILE THE WRITTEN DESIGNATION AND PARTICIPATE ORALLY AT~~

1 THE HEARING.

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

4 "70-811. Opinion issued with decision -- contents of  
5 certificate -- waiver of time requirements -- facilities for  
6 which certificate required. (1) In rendering a decision on  
7 an application for a certificate, the board shall issue an  
8 opinion stating its reasons for the action taken. If the  
9 board has found that any regional or local law or  
10 regulation, which would be otherwise applicable, is  
11 unreasonably restrictive pursuant to subsection  
12 70-810(1)(f), it shall state in its opinion the reasons  
13 therefor.

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

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

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

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

23 (iii) problems and objections raised by other federal  
24 and state agencies and ~~interested--groups~~ parties to the  
25 proceedings;

1 (iv) alternatives to the proposed facility; and

2 (v) a plan for monitoring environmental effects of the  
3 proposed facility.

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

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

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

20 (b) The board may waive compliance with any of the  
21 provisions of this chapter upon receipt of notice by a  
22 utility or person subject to this chapter that a facility or  
23 associated facility has been damaged or destroyed as a  
24 result of fire, flood or other natural disaster or as the  
25 result of insurrection, war or other civil disorder, and

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1 there exists an immediate need for construction of a new  
2 facility or associated facility or the relocation of a  
3 previously existing facility or associated facility in order  
4 to promote the public welfare."

-End-

SENATE BILL NO. 324

INTRODUCED BY DUNKLE,

THIESSEN, GALT, MANLEY, STEPHENS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 70-803, 70-806, 70-808, AND 70-811, 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 associated facilities, except for oil and gas refineries and fertilizer plants;

(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, 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 to produce hydrocarbon products or energy in any form for ultimate public use, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000);

(b) each electric transmission line and associated facilities of a design capacity of more than sixty nine (69) kilovolts, except that the term does not include an

1 ~~electric transmission line and associated facilities of a~~  
 2 ~~design capacity of two hundred thirty (230) kilovolts or~~  
 3 ~~less and ten (10) miles or less in length;~~

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

9 ~~(d) any use of geothermal resources, including the use~~  
 10 ~~of underground space in existence or to be created, for the~~  
 11 ~~creation, use, or conversion of energy;~~

12 ~~(e) any underground in situ gasification of coals;~~

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

20 ~~(5) "Commence to construct" means:~~

21 ~~(a) any clearing of land, excavation, construction, or~~  
 22 ~~other action that would affect the environment of the site~~  
 23 ~~or route of a facility, but does not mean changes needed for~~  
 24 ~~temporary use of sites or routes for nonutility purposes, or~~  
 25 ~~uses in securing geological data, including necessary~~

1 ~~borings to ascertain foundation conditions;~~

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

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

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

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

19 ~~(7) "Person" means any individual, group, firm,~~  
 20 ~~partnership, corporation, cooperative, association,~~  
 21 ~~government subdivision, government agency, local government,~~  
 22 ~~or other organization or entity;~~

23 ~~(8) "Utility" means any person engaged in any aspect~~  
 24 ~~of the production, storage, sale, delivery, or furnishing of~~  
 25 ~~heat, electricity, gas, hydrocarbon products, or energy in~~

1 ~~any form for ultimate public use~~

2 ~~(9) "Certificate" means the certificate of~~

3 ~~environmental compatibility and public need issued by the~~

4 ~~board under this chapter that is required for the~~

5 ~~construction or operation of a facility.~~

6 ~~(10) "Addition thereto" means the installation of new~~

7 ~~machinery and equipment which would significantly change the~~

8 ~~conditions under which the certificate was issued."~~

9 Section 1. Section 70-806, R.C.M. 1947, is amended to

10 read as follows:

11 "70-806. Application for certification -- filing and

12 contents -- filing fees -- notice of completion of facility

13 -- further fees -- refund -- proof of service on

14 municipalities -- amendment of application or certification.

15 (1) (a) An applicant for a certificate shall file with the

16 department a verified application, in such form as the board

17 by rule or the department by order prescribes, containing

18 the following information:

19 (i) a description of the location and of the facility

20 to be built thereon;

21 (ii) a summary of any studies which have been made of

22 the environmental impact of the facility;

23 (iii) a statement explaining the need for the facility;

24 (iv) a description of any reasonable alternate location

25 or locations for the proposed facility; a description of the

1 comparative merits and detriments of each location

2 submitted, and a statement of the reasons why the primary

3 proposed location is best suited for the facility; and

4 (v) such other information as the applicant considers

5 relevant or as the board by rule or the department by order

6 requires. A copy or copies of the studies referred to in

7 clause (ii) above shall be filed with the department, if

8 ordered, and shall be available for public inspection.

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

10 two (2) or more facilities in combination which are

11 physically and directly attached to each other and are

12 operationally a single operating entity.

13 (2) (a) The applicant shall pay to the department a

14 filing fee with the application, which shall be deposited in

15 the earmarked revenue fund for the use of the department in

16 ~~administering preparing the environmental impact studies,~~

17 ~~evaluations, and statement required by this chapter.~~ This

18 fee shall be based upon the estimated cost of the facility

19 according to the declining scale which follows: two

20 percent (2%) of any estimated cost up to one million

21 dollars (\$1,000,000); plus one percent (1%) of any estimated

22 cost over a million dollars and up to twenty million dollars

23 (\$20,000,000); plus one-half of one percent (0.5%) of any

24 estimated cost over twenty million dollars (\$20,000,000);

25 and up to one hundred million dollars (\$100,000,000); plus

1 one-quarter of one percent (0.25%) of any amount of  
 2 estimated cost over one hundred million (\$100,000,000) and  
 3 up to three hundred million dollars (\$300,000,000); plus  
 4 one-eighth of one percent (.125%) of any amount of estimated  
 5 cost over three hundred million dollars (\$300,000,000). ~~The~~  
 6 ~~revenues derived from the filing fee shall be used by the~~  
 7 ~~department in compiling the information required for~~  
 8 ~~rendering a decision on a certificate and for carrying out~~  
 9 ~~its other responsibilities under this chapter with respect~~  
 10 ~~to the facility covered by the certificate for a period not~~  
 11 ~~to exceed five (5) years after the certificate is issued for~~  
 12 ~~facilities defined in 70-803 (3) (b) and (c) or not to~~  
 13 ~~exceed ten (10) years after the certificate is issued for~~  
 14 ~~facilities defined in 70-803 (3) (a), (d), and (e). THE~~  
 15 REVENUES DERIVED FROM THE FILING FEE SHALL BE USED BY THE  
 16 DEPARTMENT IN COMPILING THE INFORMATION REQUIRED FOR  
 17 RENDERING A DECISION ON A CERTIFICATE AND FOR CARRYING OUT  
 18 ITS OTHER RESPONSIBILITIES UNDER THIS CHAPTER. If an  
 19 application consists of a combination of two (2) or more  
 20 facilities, the filing fee shall be based on the total  
 21 estimated cost of the combined facilities.

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

1 (c) The department may contract with a potential  
 2 applicant under this chapter, in advance of the filing of a  
 3 formal application, for the development of information or  
 4 provision of services required hereunder. Payments made to  
 5 the department under such a contract shall be credited  
 6 against the fee payable hereunder.

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

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

23 (5) Inadvertent failure of service on, or notice to,  
 24 any of the municipalities, government agencies or persons  
 25 identified in subsections (3) and (4) of this section may be

1 cured pursuant to orders of the department designed to  
 2 afford them adequate notice to enable their effective  
 3 participation in the proceeding. In addition, the department  
 4 may, after filing, require the applicant to serve notice of  
 5 the application or copies thereof or both upon such other  
 6 persons, and file proof thereof, as the department may deem  
 7 appropriate.

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

17 Section 2. Section 70-808, R.C.M. 1947, is amended to  
 18 read as follows:

19 "70-808. Parties to certification proceeding -- waiver  
 20 by failure to participate. (1) ~~The parties to a~~  
 21 ~~certification proceeding include:~~

22 ~~(a) the applicant;~~

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

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

12 ~~(d) the department;~~

13 ~~(2) Any party identified in subparagraphs (b) and (c)~~  
 14 ~~of subsection (1) of this section waives his right to be a~~  
 15 ~~party if he does not participate orally at the hearing~~  
 16 ~~before the board. ANY PERSON MAY BE A PARTY TO ANY HEARING~~  
 17 ~~UNDER THIS CHAPTER BY FOLLOWING THE PROCEDURE ESTABLISHED IN~~  
 18 ~~SUBSECTION (2).~~

19 ~~(2) ANY PERSON MAY BECOME A PARTY BY FILING WITHIN 60~~  
 20 ~~DAYS OF THE DEPARTMENT'S REPORT TO THE BOARD PURSUANT TO~~  
 21 ~~70-807(1), A WRITTEN DESIGNATION SETTING FORTH HIS NAME,~~  
 22 ~~ADDRESS, HOME AND BUSINESS PHONES, AND POSITION TOWARDS THE~~  
 23 ~~PROPOSED FACILITY AND BY PARTICIPATING ORALLY AT THE~~  
 24 ~~HEARING. A PERSON WAIVES HIS RIGHT TO BE A PARTY IF HE DOES~~  
 25 ~~NOT FILE THE WRITTEN DESIGNATION AND PARTICIPATE ORALLY AT~~



1 THE HEARING."

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

4 "70-811. Opinion issued with decision -- contents of  
5 certificate -- waiver of time requirements -- facilities for  
6 which certificate required. (1) In rendering a decision on  
7 an application for a certificate, the board shall issue an  
8 opinion stating its reasons for the action taken. If the  
9 board has found that any regional or local law or  
10 regulation, which would be otherwise applicable, is  
11 unreasonably restrictive pursuant to subsection  
12 70-810(1)(f), it shall state in its opinion the reasons  
13 therefor.

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

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

20 (i) the environmental impact of the proposed facility;  
21 (ii) any adverse environmental effects which cannot be  
22 avoided by issuance of the certificate;

23 (iii) problems and objections raised by other federal  
24 and state agencies and ~~interested groups~~ parties to the  
25 proceedings;

1 (iv) alternatives to the proposed facility; and

2 (v) a plan for monitoring environmental effects of the  
3 proposed facility.

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

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

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

20 (b) The board may waive compliance with any of the  
21 provisions of this chapter upon receipt of notice by a  
22 utility or person subject to this chapter that a facility or  
23 associated facility has been damaged or destroyed as a  
24 result of fire, flood or other natural disaster or as the  
25 result of insurrection, war or other civil disorder, and

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1   there exists an immediate need for construction of a new  
2   facility or associated facility or the relocation of a  
3   previously existing facility or associated facility in order  
4   to promote the public welfare."

-End-