

# CHAPTER NO. 69.

## HOUSE BILL NO. 202

INTRODUCED BY ERNST, SCHULTZ, NATHE, JOHNSTON, MANLEY

### IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Natural Resources.
January 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	Second reading, do pass.
February 1, 1979	Considered correctly engrossed.
February 2, 1979	Third reading, passed. Transmitted to second house.

### IN THE SENATE

February 3, 1979	Introduced and referred to Committee on Natural Resources.
February 23, 1979	Committee recommend bill be concurred in. Report adopted.
February 27, 1979	Second reading, concurred in.
March 1, 1979	Third reading, concurred in.

### IN THE HOUSE

March 2, 1979	Returned from second house, concurred in. Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 202  
INTRODUCED BY Ernest B. Bullock NATHE John D. Hanly

1 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE  
2 CONSIDERATION OF USING PUBLIC LANDS FOR THE LOCATION OF  
3 FACILITIES WHENEVER POSSIBLE AND COMPATIBLE TO ENVIRONMENTAL  
4 FACTORS; AMENDING SECTIONS 75-20-301 AND 75-20-503, MCA."

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 Section 1. Section 75-20-301, MCA, is amended to read:  
8 "75-20-301. Decision of board -- findings necessary  
9 for certification. (1) Within 90 days after the last day of  
10 the hearing, the board shall make complete findings, issue  
11 an opinion, and render a decision upon the record, either  
12 granting or denying the application as filed or granting it  
13 upon such terms, conditions, or modifications of the  
14 construction, operation, or maintenance of the facility as  
15 the board considers appropriate.

16 (2) The board may not grant a certificate either as  
17 proposed by the applicant or as modified by the board unless  
18 it shall find and determine:

19 (a) the basis of the need for the facility;  
20 (b) the nature of the probable environmental impact;  
21 (c) that the facility represents the minimum adverse  
22 environmental impact, considering the state of available

23 technology and the nature and economics of the various  
24 alternatives;  
25 (d) each of the criteria listed in 75-20-503;  
1 (e) in the case of an electric, gas, or liquid  
2 transmission line or aqueduct:  
3 (i) what part, if any, of the line or aqueduct shall  
4 be located underground;  
5 (ii) that the facility is consistent with regional  
6 plans for expansion of the appropriate grid of the utility  
7 systems serving the state and interconnected utility  
8 systems; and  
9 (iii) that the facility will serve the interests of  
10 utility system economy and reliability;  
11 (f) that the location of the facility as proposed  
12 conforms to applicable state and local laws and regulations  
13 issued thereunder, except that the board may refuse to apply  
14 any local law or regulation if it finds that, as applied to  
15 the proposed facility, the law or regulation is unreasonably  
16 restrictive in view of the existing technology, of factors  
17 of cost or economics, or of the needs of consumers, whether  
18 located inside or outside of the directly affected  
19 government subdivisions;  
20 (g) that the facility will serve the public interest,  
21 convenience, and necessity; and  
22 (h) that duly authorized state air and water quality

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

7 iii. that the use of public lands for location of the  
 8 facility was evaluated and public lands were selected  
 9 whenever feasible and compatible with the environmental  
 10 criteria listed in 75-20-503a

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

14 (a) the items listed in subsections (2)(a) and (2)(b)  
 15 of this section;

16 (b) the benefits to the applicant and the state  
 17 resulting from the proposed facility;

18 (c) the effects of the economic activity resulting  
 19 from the proposed facility;

20 (d) the effects of the proposed facility on the public  
 21 health, welfare, and safety;

22 (e) any other factors that it considers relevant.

23 (4) Considerations of need, public need, or public  
 24 convenience and necessity and demonstration thereof by the  
 25 applicant shall apply only to utility facilities.\*

1 Section 2. Section 75-20-503, MCA, is amended to read:  
 2 "75-20-503. Environmental factors evaluated. In  
 3 evaluating long-range plans, conducting 5-year site reviews,  
 4 and evaluating applications for certificates, the board and  
 5 department shall give consideration to the following list of  
 6 environmental factors and may by rule add to the categories  
 7 of this section:

8 (1) energy needs:

9 (a) growth in demand and projections of need;  
 10 (b) availability and desirability of alternative  
 11 sources of energy;

12 (c) availability and desirability of alternative  
 13 sources of energy in lieu of the proposed facility;

14 (d) promotional activities of the utility which may  
 15 have given rise to the need for this facility;

16 (e) socially beneficial uses of the output of this  
 17 facility, including its uses to protect or enhance  
 18 environmental quality;

19 (f) conservation activities which could reduce the  
 20 need for more energy;

21 (g) research activities of the utility of new  
 22 technology available to it which might minimize  
 23 environmental impact;

24 (2) land use impacts:

25 (a) area of land required and ultimate use;

1        (b) consistency with areawide state and regional land  
 2 use plans;  
 3        (c) consistency with existing and projected nearby  
 4 land use;  
 5        (d) alternative uses of the site;  
 6        (e) impact on population already in the area,  
 7 population attracted by construction or operation of the  
 8 facility itself;  
 9        (f) impact of availability of energy from this  
 10 facility on growth patterns and population dispersal;  
 11        (g) geologic suitability of the site or route;  
 12        (h) seismologic characteristics;  
 13        (i) construction practices;  
 14        (j) extent of erosion, scouring, wasting of land, both  
 15 at site and as a result of fossil fuel demands of the  
 16 facility;  
 17        (k) corridor design and construction precautions for  
 18 transmission lines or aqueducts;  
 19        (l) scenic impacts;  
 20        (m) effects on natural systems, wildlife, plant life;  
 21        (n) impacts on important historic, architectural,  
 22 archeological, and cultural areas and features;  
 23        (o) extent of recreation opportunities and related  
 24 compatible uses;  
 25        (p) public recreation plan for the project;

1        (q) public facilities and accommodation;  
 2        (r) opportunities for joint use with energy-intensive  
 3 industries or other activities to utilize the waste heat  
 4 from facilities;  
 5        (s) opportunities for using public lands for location  
 6 of facilities whenever feasible and if compatible to the  
 7 requirements of this section;  
 8        (3) water resources impacts;  
 9        (a) hydrologic studies of adequacy of water supply and  
 10 impact of facility on streamflow, lakes, and reservoirs;  
 11        (b) hydrologic studies of impact of facilities on  
 12 groundwater;  
 13        (c) cooling system evaluations, including consideration  
 14 of alternatives;  
 15        (d) inventory of effluents, including physical,  
 16 chemical, biological, and radiological characteristics;  
 17        (e) hydrologic studies of effects of effluents on  
 18 receiving waters, including mixing characteristics of  
 19 receiving waters, changed evaporation due to temperature  
 20 differentials, and effect of discharge on bottom sediments;  
 21        (f) relationship to water quality standards;  
 22        (g) effects of changes in quantity and quality on  
 23 water use by others, including both withdrawal and in situ  
 24 uses;  
 25        (h) relationship to projected uses;

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1        (i) relationship to water rights;  
 2        (j) effects on plant and animal life, including algae,  
 3        macroinvertebrates, and fish population;  
 4        (k) effects on unique or otherwise significant  
 5        ecosystems, e.g., wetlands;  
 6        (l) monitoring programs;  
 7        (m) air quality impacts:  
 8        (a) meteorology--wind direction and velocity, ambient  
 9        temperature ranges, precipitation values, inversion  
 10      occurrence, other effects on dispersion;  
 11      (b) topography--factors affecting dispersion;  
 12      (c) standards in effect and projected for emissions;  
 13      (d) design capability to meet standards;  
 14      (e) emissions and controls:  
 15      (i) stack design;  
 16      (ii) particulates;  
 17      (iii) sulfur oxides;  
 18      (iv) oxides of nitrogen; and  
 19      (v) heavy metals, trace elements, radioactive  
 20      materials, and other toxic substances;  
 21      (f) relationship to present and projected air quality  
 22      of the area;  
 23      (g) monitoring program;  
 24      (h) solid wastes impact:  
 25      (a) solid waste inventory;

1        (b) disposal program;  
 2        (c) relationship of disposal practices to  
 3        environmental quality criteria;  
 4        (d) capacity of disposal sites to accept projected  
 5        waste loadings;  
 6        (e) radiation impacts:  
 7        (a) land use controls over development and population;  
 8        (b) wastes and associated disposal program for solid,  
 9        liquid, radioactive, and gaseous wastes;  
 10      (c) analyses and studies of the adequacy of  
 11      engineering safeguards and operating procedures;  
 12      (d) monitoring--adequacy of devices and sampling  
 13      techniques;  
 14      (f) noise impacts:  
 15      (a) construction period levels;  
 16      (b) operational levels;  
 17      (c) relationship of present and projected noise levels  
 18      to existing and potential stricter noise standards;  
 19      (d) monitoring--adequacy of devices and methods."

-End-

Appropriation Committee  
on Natural Resources

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 19 (ii) particulates;  
 20 (iii) sulfur oxides;  
 21 (iv) oxides of nitrogen; and  
 22 (v) heavy metals, trace elements, radioactive  
 23 materials, and other toxic substances;  
 24 (f) relationship to present and projected air quality  
 25 of the area;

1 (g) monitoring programs;  
 2 (5) solid wastes impacts:  
 3 (a) solid waste inventory;  
 4 (b) disposal program;  
 5 (c) relationship of disposal practices to  
 6 environmental quality criteria;  
 7 (d) capacity of disposal sites to accept projected  
 8 waste loadings;  
 9 (6) radiation impacts:  
 10 (a) land use controls over development and population;  
 11 (b) wastes and associated disposal program for solid,  
 12 liquid, radioactive, and gaseous wastes;  
 13 (c) analyses and studies of the adequacy of  
 14 engineering safeguards and operating procedures;  
 15 (d) monitoring--adequacy of devices and sampling  
 16 techniques;  
 17 (7) noise impacts:  
 18 (a) construction period levels;  
 19 (b) operational levels;  
 20 (c) relationship of present and projected noise levels  
 21 to existing and potential stricter noise standards;  
 22 (d) monitoring--adequacy of devices and methods."

-End-

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

11       Section 1. Section 75-20-301, MCA, is amended to read:  
12       "75-20-301. Decision of board -- findings necessary  
13 for certification. (1) Within 90 days after the last day of  
14 the hearing, the board shall make complete findings, issue  
15 an opinion, and render a decision upon the record, either  
16 granting or denying the application as filed or granting it  
17 upon such terms, conditions, or modifications of the  
18 construction, operation, or maintenance of the facility as  
19 the board considers appropriate.

20 (2) The board may not grant a certificate either as  
21 proposed by the applicant or as modified by the board unless  
22 it shall find and determine:

23 (a) the basis of the need for the facility;  
24 (b) the nature of the probable environmental impact;  
25 (c) that the facility represents the minimum adverse

1 environmental impact, considering the state of available  
2 technology and the nature and economics of the various  
3 alternatives;

4 (d) each of the criteria listed in 75-20-503;

5 (e) in the case of an electric, gas, or liquid  
6 transmission line or aqueduct:

7 (i) what parts, if any, of the line or aqueduct shall  
8 be located underground;

9 (ii) that the facility is consistent with regional  
10 plans for expansion of the appropriate grid of the utility  
11 systems serving the state and interconnected utility  
12 systems; and

13 (iii) that the facility will serve the interests of  
14 utility system economy and reliability;

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

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

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

8       *iii. that the use of public lands for location of the*  
 9 *facility was evaluated and public lands were selected*  
 10 *whenever feasible THEIR USE IS AS ECONOMICALLY PRACTICABLE*  
 11 *AS THE USE OF PRIVATE LANDS and compatible with the*  
 12 *environmental criteria listed in 75-20-503a*

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

16       (a) the items listed in subsections (2)(a) and (2)(b)  
 17 of this section;

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

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

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

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

25       (4) Considerations of need, public needs or public

1       convenience and necessity and demonstration thereof by the  
 2 applicant shall apply only to utility facilities."

3       Section 2. Section 75-20-503, MCA, is amended to read:  
 4       "75-20-503. Environmental factors evaluated. In  
 5 evaluating long-range plans, conducting 5-year site reviews,  
 6 and evaluating applications for certificates, the board and  
 7 department shall give consideration to the following list of  
 8 environmental factors and may by rule add to the categories  
 9 of this section:

10       (1) energy needs:  
 11       (a) growth in demand and projections of need;  
 12       (b) availability and desirability of alternative  
 13 sources of energy;  
 14       (c) availability and desirability of alternative  
 15 sources of energy in lieu of the proposed facility;  
 16       (d) promotional activities of the utility which may  
 17 have given rise to the need for this facility;  
 18       (e) socially beneficial uses of the output of this  
 19 facility, including its uses to protect or enhance  
 20 environmental quality;  
 21       (f) conservation activities which could reduce the  
 22 need for more energy;  
 23       (g) research activities of the utility of new  
 24 technology available to it which might minimize  
 25 environmental impact;

## 1        (2) land use impacts:

2        (a) area of land required and ultimate use;

3        (b) consistency with areawide state and regional land

4        use plans;

5        (c) consistency with existing and projected nearby

6        land use;

7        (d) alternative uses of the site;

8        (e) impact on population already in the area;

9        population attracted by construction or operation of the

10      facility itself;

11      (f) impact of availability of energy from this

12      facility on growth patterns and population dispersal;

13      (g) geologic suitability of the site or route;

14      (h) seismologic characteristics;

15      (i) construction practices;

16      (j) extent of erosion, scouring, wasting of land, both

17      at site and as a result of fossil fuel demands of the

18      facility;

19      (k) corridor design and construction precautions for

20      transmission lines or aqueducts;

21      (l) scenic impacts;

22      (m) effects on natural systems, wildlife, plant life;

23      (n) impacts on important historic, architectural,

24      archeological, and cultural areas and features;

25      (o) extent of recreation opportunities and related

## 1        compatible uses;

2        (p) public recreation plan for the project;

3        (q) public facilities and accommodation;

4        (r) opportunities for joint use with energy-intensive

5        industries or other activities to utilize the waste heat

6        from facilities;

7        (s) opportunities for using public lands for location

8        of facilities whenever feasible AS ECONOMICALLY PRACTICABLE

9        AS THE USE OF PRIVATE LANDS and if compatible to WITH the

10      requirements of this section;

## 11      (3) water resources impacts:

12      (a) hydrologic studies of adequacy of water supply and

13      impact of facility on streamflow, lakes, and reservoirs;

14      (b) hydrologic studies of impact of facilities on

15      groundwater;

16      (c) cooling system evaluations, including consideration

17      of alternatives;

18      (d) inventory of effluents, including physical,

19      chemical, biological, and radiological characteristics;

20      (e) hydrologic studies of effects of effluents on

21      receiving waters, including mixing characteristics of

22      receiving waters, changed evaporation due to temperature

23      differentials, and effect of discharge on bottom sediments;

24      (f) relationship to water quality standards;

25      (g) effects of changes in quantity and quality on

1 water use by others, including both withdrawal and in situ  
 2 uses;  
 3 (h) relationship to projected uses;  
 4 (i) relationship to water rights;  
 5 (j) effects on plant and animal life, including algae,  
 6 macroinvertebrates, and fish population;  
 7 (k) effects on unique or otherwise significant  
 8 ecosystems, e.g., wetlands;  
 9 (l) monitoring programs;  
 10 (m) air quality impacts;  
 11 (a) meteorology--wind direction and velocity, ambient  
 12 temperature ranges, precipitation values, inversion  
 13 occurrence, other effects on dispersion;  
 14 (b) topography--factors affecting dispersion;  
 15 (c) standards in effect and projected for emissions;  
 16 (d) design capability to meet standards;  
 17 (e) emissions and controls;  
 18 (i) stack design;  
 19 (ii) particulates;  
 20 (iii) sulfur oxides;  
 21 (iv) oxides of nitrogen; and  
 22 (v) heavy metals, trace elements, radioactive  
 23 materials, and other toxic substances;  
 24 (f) relationship to present and projected air quality  
 25 of the area;

1 (g) monitoring program;  
 2 (5) solid wastes impact;  
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 14 engineering safeguards and operating procedures;  
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 16 techniques;  
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-End-