

HOUSE BILL 280

IN THE HOUSE

January 19, 1979

Introduced and referred
to Committee on Natural
Resources.

Mail

1 *House* BILL NO. *280*
 2 INTRODUCED BY *Sen. Thayer - Manuel Mader*
 3 *Stainville, Sifert, K. Robbins, DeLuca, Curtis, Hoffmann, Thirion, Gordon, TON, Koster, Allyn, Lodie, Smith, Graham, Marley*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MAJOR FACILITY SITING ACT; INCLUDING A PROVISION FOR STAY OF
 6 BOARD ORDER PENDING APPEAL WITH POSTING OF SURETY BOND;
 7 AMENDING SECTIONS 75-20-104, 75-20-106, 75-20-
 8 75-20-213, 75-20-216, 75-20-219, AND 75-20-503, MCA."

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

11 Section 1. Section 75-20-104, MCA, is amended to read:
12 "75-20-104. Definitions. In this chapter, unless the
13 context requires otherwise the following definitions apply:

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

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

24 (3) "Board" means the board of natural resources and
25 conservation provided for in 2-15-3302.

1 (4) "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 (5) "Commence to construct" means:
6 (a) any clearing of land, excavation, construction, or
7 other action that would affect the environment of the site
8 or route of a facility but does not mean changes needed for
9 temporary use of sites or routes for nonutility purposes or
10 uses in securing geological data, including necessary
11 borings to ascertain foundation conditions;

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

19 (c) the commencement of eminent domain proceedings
20 under Title 70, chapter 30, for land or rights-of-way upon
21 or over which a facility may be constructed;

22 (d) the relocation or upgrading of an existing
23 facility defined by (b) or (c) of subsection (7), including
24 upgrading to a design capacity covered by subsection (7)(b),
25 except that the term does not include normal maintenance or

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1 repair of an existing facility.

2 (6) "Department" means the department of natural
3 resources and conservation provided for in Title 2, chapter
4 15, part 33.

5 (7) "Facility" means:

6 (a) each plant, unit, or other facility and
7 associated facilities, except for oil and gas refineries,
8 designed for or capable of:

9 (i) generating 50 megawatts of electricity or more or
10 any addition thereto (except pollution control facilities
11 approved by the department of health and environmental
12 sciences added to an existing plant) having an estimated
13 cost in excess of \$250,000;

14 (ii) producing 25 million cubic feet of gas per day or
15 more or any addition thereto having an estimated cost in
16 excess of \$250,000;

17 (iii) producing 25,000 barrels of liquid hydrocarbon
18 products per day or more or any addition thereto having an
19 estimated cost in excess of \$250,000;

20 (iv) enriching uranium minerals or any addition thereto
21 having an estimated cost in excess of \$250,000; or

22 (v) utilizing, refining, or converting 500,000 tons of
23 coal per year or more or any addition thereto having an
24 estimated cost in excess of \$250,000;

25 (b) each electric transmission line and associated

1 facilities of a design capacity of more than 69 115
2 kilovolts, except that the term does not include an electric
3 transmission line and associated facilities of a design
4 capacity of 230 kilovolts or less and 10 miles or less in
5 length;

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

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

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

15 (8) "Municipality" means any county or municipality
16 within this state.

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

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

25 Section 2. Section 75-20-106, MCA, is amended to read:

1 "75-20-106. Contracts for information -- credit
2 against fee. (1) The department may contract with a
3 potential applicant under this chapter in advance of the
4 filing of a formal application for the development of
5 information or provision of services required hereunder.

6 (2) Payments made to the department under such a
7 contract shall be credited against the fee payable
8 hereunder.

9 (3) A potential applicant shall receive credit against
10 the fee payable under 75-20-215 for the development of
11 information or provision of services required hereunder or
12 required for preparation of an environmental impact
13 statement under the National Environmental Policy Act."

14 Section 3. Section 75-20-211, MCA, is amended to read:

15 "75-20-211. Application -- filing and contents --
16 proof of service and notice. (1) (a) An applicant for a
17 certificate shall file with the department a verified
18 application, in such form as the board by rule or the
19 department by order prescribes, containing the following
20 information:

21 (i) a description of the location and of the facility
22 to be built thereon;

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

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

1 (iv) a description of any reasonable alternate location
2 or locations for the proposed facility, a general
3 description of the comparative merits and detriments of each
4 location submitted, and a statement of the reasons why the
5 primary proposed location is best suited for the facility;
6 and

7 (v) such other information as the applicant considers
8 relevant or as the board by rule or the department by order
9 requires.

10 (b) A copy or copies of the studies referred to in
11 subsection (1)(a)(ii) above shall be filed with the
12 department, if ordered, and shall be available for public
13 inspection.

14 (2) An application may consist of an application for
15 two or more facilities in combination which are physically
16 and directly attached to each other and are operationally a
17 single operating entity.

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

25 (4) The copy of the application shall be accompanied

1 by a notice specifying the date on or about which the
2 application is to be filed.

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

10 (6) In addition, the department may, after filing,
11 require the applicant to serve notice of the application or
12 copies thereof, or both, upon such other persons, and file
13 proof thereof, as the department may deem appropriate."

14 Section 4. Section 75-20-213, MCA, is amended to read:

15 "75-20-213. Amendment -- restrictions. (1) An
16 application for an amendment of an application or a
17 certificate shall be in such form and contain such
18 information as the board by rule or the department by order
19 prescribes. Notice of such an application shall be given as
20 set forth in (3), (4), and (5) of 75-20-211.

21 ~~(2) If an amendment to an original application would~~
22 ~~result in a substantial change of the original application,~~
23 ~~such an amendment shall be considered as a new application~~
24 ~~and a new filing fee shall be required. An application for~~
25 an amendment of an application or a certificate is required

1 if there is a substantial change in the location of all or a
2 portion of the facility other than as provided in the
3 alternates set forth in the original application."

4 Section 5. Section 75-20-216, MCA, is amended to read:

5 "75-20-216. Study, evaluation, and report on proposed
6 facility -- assistance by other agencies. (1) Upon receipt
7 of an application complying with 75-20-211 through
8 75-20-215, the department shall commence an intensive study
9 and evaluation of the proposed facility and its effects,
10 considering all the criteria listed in 75-20-301 and
11 75-20-503.

12 (2) Within ~~2--years~~ 1 year following receipt of an
13 application for a facility as defined in (a) and (d) of
14 75-20-104(7) and for a facility as defined in (b) and (c) of
15 75-20-104(7) which is more than 30 miles in length and
16 within ~~1-year~~ 6 months for a facility as defined in (b) and
17 (c) of 75-20-104(7) which is 30 miles or less in length, the
18 department shall make a report to the board which shall
19 contain the department's studies, evaluations,
20 recommendations, other pertinent documents resulting from
21 its study and evaluation, and the final environmental impact
22 statement. If the application is for a combination of two
23 or more facilities, the department shall make its report to
24 the board within the greater of the lengths of time provided
25 for in this subsection for either of the facilities.

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

Section 6. Section 75-20-219, MCA, is amended to read:

"75-20-219. ~~Hearing on amendment~~ Amendment of application. ~~On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the application. Upon an application for an amendment to a certificate, if a proposed change in the facility or in the alternates set forth in the application is requested, the applicant and the board shall discuss the proposed change in light of whether or not it will result in a material increase in any environmental~~

impact of the facility; and the board may then, subject to judicial review, impose conditions upon the certificate consistent with the policy of the Montana Major Facility Siting Act as promulgated through board rules."

Section 7. Section 75-20-503, MCA, is amended to read:

"75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors and may by rule add to the categories of this section:

- (1) energy needs;
 - ~~(a) growth in demand and projections of need;~~
 - ~~(b) availability and desirability of alternative sources of energy;~~
 - ~~(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;~~
 - ~~(d) promotional activities of the utility which may have given rise to the need for this facility;~~
 - ~~(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;~~
 - ~~(f) conservation activities which could reduce the need for more energy;~~
 - ~~(g) research activities of the utility of new~~

1 ~~technology available to it which might minimize~~
 2 ~~environmental impacts~~

3 (2) land use impacts ~~impact:~~

4 (a) ~~area of land required and ultimate use~~

5 (b) ~~consistency with areawide state and regional land~~
 6 ~~use plans~~

7 (c) ~~consistency with existing and projected nearby~~
 8 ~~land use~~

9 (d) ~~alternative uses of the site~~

10 (e) ~~impact on population already in the area~~
 11 ~~population attracted by construction or operation of the~~
 12 ~~facility itself~~

13 (f) ~~impact of availability of energy from this~~
 14 ~~facility on growth patterns and population dispersal~~

15 (g) ~~geologic suitability of the site or route~~

16 (h) ~~seismologic characteristics~~

17 (i) ~~construction practices~~

18 (j) ~~extent of erosion, scouring, wasting of land, both~~
 19 ~~at site and as a result of fossil fuel demands of the~~
 20 ~~facility~~

21 (k) ~~corridor design and construction precautions for~~
 22 ~~transmission lines or aqueducts~~

23 (l) ~~scenic impacts~~

24 (m) ~~effects on natural systems, wildlife, plant life~~

25 (n) ~~impacts on important historic architecture~~

1 ~~archeological and cultural areas and features~~

2 (o) ~~extent of recreation opportunities and related~~
 3 ~~compatible uses~~

4 (p) ~~public recreation plan for the project~~

5 (q) ~~public facilities and accommodation~~

6 (r) ~~opportunities for joint use with energy intensive~~
 7 ~~industries or other activities to utilize the waste heat~~
 8 ~~from facilities~~

9 (3) water resources ~~impact:~~

10 (a) ~~hydrologic studies of adequacy of water supply and~~
 11 ~~impact of facility on streamflow, lakes and reservoirs~~

12 (b) ~~hydrologic studies of impact of facilities on~~
 13 ~~groundwater~~

14 (c) ~~cooling system evaluation, including consideration~~
 15 ~~of alternatives~~

16 (d) ~~inventory of effluents, including physical~~
 17 ~~chemical, biological and radiological characteristics~~

18 (e) ~~hydrologic studies of effects of effluents on~~
 19 ~~receiving waters, including mixing characteristics of~~
 20 ~~receiving waters, changed evaporation due to temperature~~
 21 ~~differentials, and effect of discharge on bottom sediments~~

22 (f) ~~relationship to water quality standards~~

23 (g) ~~effects of changes in quantity and quality on~~
 24 ~~water use by others, including both withdrawal and in situ~~
 25 ~~uses~~

1 ~~{h}--relationship-to-projected-uses†~~
 2 ~~{i}--relationship-to-water-rights†~~
 3 ~~{j}--effects-on-plant-and-animal-life-including-algae~~
 4 ~~macroinvertebrates-and-fish-populations†~~
 5 ~~{k}--effects-on-unique-or-otherwise-significant~~
 6 ~~ecosystems-such-as-wetlands†~~
 7 ~~{l}--monitoring-programs†~~
 8 (4) air quality impacts impact₁
 9 ~~{e}--meteorology-wind-direction-and-velocity-ambient~~
 10 ~~temperature-ranges-precipitation-values-inversion~~
 11 ~~occurrence-other-effects-on-dispersion†~~
 12 ~~{b}--topography-factors-affecting-dispersion†~~
 13 ~~{c}--standards-in-effect-and-projected-for-emissions†~~
 14 ~~{d}--design-capability-to-meet-standards†~~
 15 ~~{e}--emissions-and-controls†~~
 16 ~~{i}--stack-design†~~
 17 ~~{ii}--particulates†~~
 18 ~~{iii}--sulfur-oxides†~~
 19 ~~{iv}--oxides-of-nitrogen-and~~
 20 ~~{v}--heavy-metals-trace-elements-radioactive~~
 21 ~~materials-and-other-toxic-substances†~~
 22 ~~{f}--relationship-to-present-and-projected-air-quality~~
 23 ~~of-the-area†~~
 24 ~~{g}--monitoring-programs†~~
 25 (5) solid wastes impact₂

1 ~~{a}--solid-waste-inventory†~~
 2 ~~{b}--disposal-program†~~
 3 ~~{c}--relationship-of-disposal-practices-to~~
 4 ~~environmental-quality-criteria†~~
 5 ~~{d}--capacity-of-disposal-sites-to-accept-projected~~
 6 ~~waste-loadings†~~
 7 (6) radiation impacts impact₃ and
 8 ~~{a}--land-use-controls-over-development-and-population†~~
 9 ~~{b}--wastes-and-associated-disposal-program-for-solid~~
 10 ~~liquid-radioactive-and-gaseous-wastes†~~
 11 ~~{c}--analyses-and-studies-of-the-adequacy-of~~
 12 ~~engineering-safeguards-and-operating-procedures†~~
 13 ~~{d}--monitoring-adequacy-of-devices-and-sampling~~
 14 ~~techniques†~~
 15 (7) noise impacts impact₄
 16 ~~{a}--construction-period-levels†~~
 17 ~~{b}--operational-levels†~~
 18 ~~{c}--relationship-of-present-and-projected-noise-levels~~
 19 ~~to-existing-and-potential-stricter-noise-standards†~~
 20 ~~{d}--monitoring-adequacy-of-devices-and-methods†~~
 21 NEW SECTION. Section 8. Order not stayed by appeal --
 22 stay or suspension by court -- limitations. Notwithstanding
 23 any contrary provision in the law, the pendency of an appeal
 24 from a board order does not automatically stay or suspend
 25 the operation of the order. During the pendency of the

1 appeal, the court may upon motion by one of the parties stay
 2 or suspend, in whole or in part, the operation of the
 3 board's orders on terms the court considers just. The
 4 court's action must be in accordance with the practice of
 5 courts exercising equity jurisdiction, subject to the
 6 following limitations:

7 (1) No stay may be granted without notice to the
 8 parties and an opportunity to be heard by the court.

9 (2) No board order may be stayed or suspended without
 10 finding that great or irreparable damage would otherwise
 11 result to the party seeking the stay or suspension, and any
 12 other stay or suspension of a board order must specify the
 13 nature of the damage.

14 NEW SECTION. Section 9. Surety bond -- other
 15 security. (1) If an order of the board is stayed or
 16 suspended, the court shall require a bond with good and
 17 sufficient surety conditioned that the party petitioning for
 18 review answer for all damages caused by the delay in
 19 enforcing the order of the board.

20 (2) The court may in addition or in lieu of the bond
 21 require other further security for the payment of excess
 22 damages or charges as it considers proper.

23 Section 10. Codification. It is the intent of the
 24 legislature that sections 8 and 9 become an integral part of
 25 Title 75, chapter 20, MCA, and that the provisions of that

1 chapter apply to sections 8 and 9.

-End-