

CHAPTER NO. 626

HOUSE BILL NO. 883

INTRODUCED BY BARDANOUVE, SCULLY

IN THE HOUSE

February 17, 1979	On motion, rules suspended. Bill allowed to be introduced.
February 20, 1979	Introduced and referred to Committee on Natural Resources.
	Passed out of committee without recommendation.
February 22, 1979	Committee recommend bill do pass. Report adopted.
	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.
	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 22, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 24, 1979	Second reading, concurred in as amended.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.
March 31, 1979	Second reading, amendments rejected.

March 31, 1979	On motion Free Joint Conference Committee requested.
April 2, 1979	Free Joint Conference Committee appointed.
April 17, 1979	Free Joint Conference Committee reported.
April 18, 1979	Second reading, adopted.
	Third reading, adopted.
	Adopted by second house.
April 19, 1979	Sent to enrolling.
	Reported correctly enrolled.

1 2000 BILL NO. 883
2 INTRODUCED BY Bowdoin C. Smith
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
6 SECTIONS 75-2-211, 75-20-103, 75-20-104, 75-20-203,
7 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-218 THROUGH
8 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401,
9 75-20-402, 75-20-406, 75-20-408, 75-20-501, AND 75-20-503,
10 MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH 75-20-1105.
11 MCA."

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

14 Section 1. Section 75-20-103, MCA, is amended to read:
15 "75-20-103. Chapter supersedes other laws or rules.
16 This chapter supersedes other laws or regulations except as
17 provided in 75-20-401. If any provision of this chapter is
18 in conflict with any other law of this state or any rule
19 promulgated thereunder, this chapter shall govern and
20 control and the other law or rule shall be deemed superseded
21 for the purpose of this chapter. Amendments to this chapter
22 shall have the same effect."
23

23 Section 2. Section 75-20-104, MCA, is amended to read:

24 "75-20-104. Definitions. In this chapter, unless the

25 context requires otherwise the following definitions apply:

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

4 12) "Application" means an application for a
5 certificate submitted in accordance with this chapter and
6 the rules adopted hereunder.

7 t27L31 "Associated facilities" includes but is not
8 limited to transportation links of any kind, aqueducts,
9 diversion dams, transmission substations, storage ponds,
10 reservoirs, and any other device or equipment associated
11 with the production or delivery of the energy form or
12 product produced by a facility, except that the term does
13 not include a facility.

14 **t37151** "Board" means the board of natural resources
15 and conservation provided for in 2-15-3302.

16 ~~t47151~~ "Certificate" means the certificate of
17 environmental compatibility and public need issued by the
18 board under this chapter that is required for the
19 construction or operation of a facility.

20 **t5t1b1** "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

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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 70, chapter 30, 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 (b) or (c) of subsection ~~77~~ 181,
 14 including upgrading to a design capacity covered by
 15 subsection ~~77~~ 181(b), except that the term does not include
 16 normal maintenance or repair of an existing facility.

17 ~~66~~ "Department" means the department of natural
 18 resources and conservation provided for in Title 2, chapter
 19 15, part 33.

20 ~~77~~ 181 "Facility" means:

21 (a) each plant, unit, or other facility and
 22 associated facilities, except for oil and gas refineries,
 23 designed for or capable of:

24 (i) generating 50 megawatts of electricity or more or
 25 any addition thereto (except pollution control facilities

1 approved by the department of health and environmental
 2 sciences added to an existing plant) having an estimated
 3 cost in excess of \$250,000;

4 (ii) producing 25 million cubic feet ~~or more~~ of gas
 5 derived from coal per day ~~or more~~ or any addition thereto
 6 having an estimated cost in excess of \$250,000;

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

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

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

15 (b) each electric transmission line and associated
 16 facilities of a design capacity of more than 69 kilovolts,
 17 except that the term does not include an electric
 18 transmission line and associated facilities of a design
 19 capacity of 230 kilovolts or less and 10 miles or less in
 20 length;

21 (c) each pipeline and associated facilities designed
 22 for or capable of transporting gas, water, or liquid
 23 hydrocarbon products from or to a facility located within or
 24 without this state of the size indicated in subsection ~~77~~
 25 181(a) of this section;

1 (d) any use of geothermal resources, including the use
 2 of underground space in existence or to be created, for the
 3 creation, use, or conversion of energy ~~designed for or~~
~~capable of producing geothermally derived power equivalent~~
~~to 25 million Btu per hour or more or any addition thereto~~
~~having an estimated cost in excess of \$250,000.~~

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

8 ~~(f) --"Municipality"-- means --any--county-or-municipality~~
 9 ~~within this state.~~

10 (g) "Person" means any individual, group, firm,
 11 partnership, corporation, cooperative, associations,
 12 government subdivision, government agency, local government,
 13 or other organization or entity.

14 ~~(10) "Transmission substation" means any structures~~
 15 ~~devices or equipment assemblage, commonly located and~~
~~designed for voltage regulation, circuit protection or~~
~~switching necessary for the construction or operation of a~~
~~proposed transmission line.~~

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

23 Section 3. Section 75-20-203, MCA, is amended to read:

24 "75-20-203. Certificate transferable. A certificate
 25 may be transferred, subject to the approval of the

1 department board, to a person who agrees to comply with the
 2 terms, conditions, and modifications contained therein."

3 Section 4. Section 75-20-211, MCA, is amended to read:
 4 "75-20-211. Application -- filing and contents --
 5 proof of service and notice. (1) (a) An applicant for a
 6 certificate shall file with the department ~~e--verified an~~
 7 application, in such form as the board by rule or the
 8 department by order prescribes, containing the following
 9 information:

10 (i) a description of the location and of the facility
 11 to be built thereon;

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

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

15 (iv) a description of any reasonable alternate location
 16 or locations for the proposed facility, a general
 17 description of the comparative merits and detriments of each
 18 location submitted, and a statement of the reasons why the
 19 primary proposed location is best suited for the facility;
 20 and

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

24 (b) A copy or copies of the studies referred to in
 25 subsection (1)(a)(ii) above shall be filed with the

1 department, if ordered, and shall be available for public
2 inspection.

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

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 county commissioner, city or county planning boards,
11 and federal agencies charged with the duty of protecting the
12 environment or of planning land use in the area in which any
13 portion of the proposed facility is-to ~~may~~ be located, both
14 as primarily and as alternatively proposed, and on the
15 following state government agencies:

16 1el environmental quality council;

17 1bl department of health and environmental sciences;

18 1cl department of public service regulation;

19 1dl department of fish and game;

20 1el department of state lands;

21 1fl department of community affairs;

22 1gl department of highways;

23 1bl department of revenue;

24 1ll the attorney general;

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--fitted--in--those--newspapers--as--will--serve
9 substantially--to--inform--those--persons--of--the--application--
10 area--or--alternative--areas--in--which--any--portion--of--the
11 proposed--facility--may--be--located--by--publication--of--a
12 summary--of--the--application--in--those--newspapers--that--will
13 substantially--inform--those--persons--of--the--application--

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

18 Section 5. Section 75-20-213, MCA, is amended to read:

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

25 (2) ~~if--an--amendment--to--an--original--application--would~~

1 result-in-a-substantial-change-of-the-original-application
 2 An application for an amendment of an application is
 3 required if the department determines that there is a
 4 substantial change in the location, design, or operation of
 5 all or a portion of the facility other than as provided in
 6 the alternatives set forth in the original application. Such
 7 an amendment shall be considered as a new application
 8 and a new filing fee shall be required.

9 ~~If the department determines that a proposed
 10 change in the location, design, or operation of a proposed
 11 facility results from the requirements of other government
 12 agencies and would result in less environmental impact, an
 13 application for an amendment is required. However, if the
 14 proposed change is such that it prevents the department from
 15 carrying out its duties and responsibilities under this
 16 chapter, the department shall require a new application and
 17 filing fee.~~

18 Section 6. Section 75-20-214, MCA, is amended to read:
 19 "75-20-214. Notice of intent to file. A potential
 20 applicant for a certificate may file a notice of intent to
 21 file an application for a certificate for a facility defined
 22 in 75-20-104~~77~~ 75-20-104~~81~~ at least 12 months prior to the
 23 actual filing of an application. The notice of intent shall
 24 specify the type and size of facility to be applied for, its
 25 preferred location, a description of reasonable alternative

1 locations, and such information as the board by rule or
 2 department by order requires. An applicant complying with
 3 this section is entitled to a 5% reduction of the filing fee
 4 required under 75-20-215."

5 Section 7. Section 75-20-215, MCA, is amended to read:
 6 "75-20-215. Filing fee -- accountability -- refund --
 7 use. (1) A filing fee shall be deposited in the earmarked
 8 revenue fund for the use of the department in administering
 9 this chapter. The applicant shall pay to the department a
 10 filing fee ~~with-the-application~~ based upon the estimated
 11 cost of the facility according to the declining scale which
 12 follows:

13 (a) 2% of any estimated cost up to \$1 million; plus
 14 (b) 1% of any estimated cost over \$1 million and up to
 15 \$20 million; plus
 16 (c) 0.5% of any estimated cost over \$20 million and up
 17 to \$100 million; plus

18 (d) 0.25% of any amount of estimated cost over \$100
 19 million and up to \$300 million; plus
 20 (e) .125% of any amount of estimated cost over \$300
 21 million.

22 ~~121. The total filing fee shall be submitted to the
 23 department upon submission of an application unless the
 24 applicant and the department have previously agreed to a
 25 schedule of payments whereby a filing fee may be paid in~~

1 installments.

2 *(b) If the applicant and department agree to the*
 3 *payment of a filing fee on the installment basis, the*
 4 *revenue derived from the filing fee must be sufficient to*
 5 *enable the department, the board, the duly authorized state*
 6 *air and water quality agencies, the agencies listed in*
 7 *75-20-216(4), and the attorney general to carry out their*
 8 *responsibilities under this chapter.*

9 *(c) If an agreement is not entered but the applicant*
 10 *wishes to pay the filing fee in installments, the applicant*
 11 *may pay the filing fee in accordance with a schedule of*
 12 *installments developed by the department, provided that no*
 13 *one installment may exceed 20% of the total filing fee*
 14 *provided for in subsection (a).*

15 *(d) The estimated cost of upgrading an existing*
 16 *transmission substation may not be included in the estimated*
 17 *cost of a proposed facility for the purpose of calculating a*
 18 *filing fee.*

19 *(e) If an application consists of a combination of*
 20 *two or more facilities, the filing fee shall be based on the*
 21 *total estimated cost of the combined facilities.*

22 *(f) The applicant is entitled to an accounting of*
 23 *moneys expended and to a refund with interest at the rate of*
 24 *6% a year of that portion of the filing fee not expended by*
 25 *the department in carrying out its responsibilities under*

1 this chapter. A refund shall be made after all
 2 administrative and judicial remedies have been exhausted by
 3 all parties to the certification proceedings.

4 *(4) The revenues derived from filing fees shall be*
 5 *used by the department in compiling the information required*
 6 *for rendering a decision on a certificate and for carrying*
 7 *out its and the board's other responsibilities under this*
 8 *chapter with respect to the facility covered by the*
 9 *certificate for a period not to exceed 5 years after the*
 10 *certificate is issued for facilities defined in*
 11 *75-20-184(7)(b) and (e) or not to exceed 10 years after the*
 12 *certificate is issued for facilities defined in*
 13 *75-20-184(7)(a)(v), (d), and (e), except that a minimum of 23*
 14 *of the revenues derived shall be allocated to the attorney*
 15 *general by the department if he becomes an active party to*
 16 *the certification proceedings."*

17 Section 8. Section 75-20-216, MCA, is amended to read:
 18 *"75-20-216. Study, evaluation, and report on proposed*
 19 *facility -- assistance by other agencies. (1) After receipt*
 20 *of an application, the department shall within 30 days*
 21 *notify the applicant in writing that:*

22 *(a) the application is in compliance and is accepted*
 23 *as complete; or*
 24 *(b) the application is not in compliance and list the*
 25 *deficiencies therein; and upon correction of these*

1 deficiencies and resubmission by the applicant, the
 2 department shall within 30 days notify the applicant in
 3 writing that the application is in compliance and is
 4 accepted as complete.

5 (2) If an application is accepted as complete within
 6 60 days of the original receipt by the department under
 7 subsection (1)(a), the application's effective filing and
 8 receipt date relates back to the original date the
 9 application was filed. In all other cases the effective
 10 filing and receipt date is the date on which the department
 11 accepts the application as complete.

12 (3) Upon receipt of an application complying with
 13 75-20-211 through 75-20-215, and this section, the
 14 department shall commence an intensive study and evaluation
 15 of the proposed facility and its effects, considering all
 16 the criteria listed in 75-20-301 and 75-20-503. The
 17 department shall use to the extent it considers applicable,
 18 valid and useful existing studies and reports submitted by
 19 the applicant or compiled by a state or federal agency.

20 (4) Within 2 years following receipt acceptance of
 21 an application for a facility as defined in (a) and (d) of
 22 75-20-104~~77~~ 75-20-104~~181~~ and for a facility as defined in
 23 (b) and (c) of 75-20-104~~77~~ 75-20-104~~181~~ which is more than
 24 30 miles in length and within 1 year for a facility as
 25 defined in (b) and (c) of 75-20-104~~77~~ 75-20-104~~181~~ which is

1 30 miles or less in length, the department shall make a
 2 report to the board which shall contain the department's
 3 studies, evaluations, recommendations, other pertinent
 4 documents resulting from its study and evaluation, and the
 5 find an environmental impact statement or analysis prepared
 6 pursuant to the Montana Environmental Policy Act, if any.
 7 If the application is for a combination of two or more
 8 facilities, the department shall make its report to the
 9 board within the greater of the lengths of time provided for
 10 in this subsection for either of the facilities.

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

22 Section 9. Section 75-20-218, MCA, is amended to read:
 23 (75-20-218) Hearing date -- location -- department to
 24 act as staff -- hearings to be held jointly. (1) Upon
 25 receipt of the department's report submitted under

1 75-20-216, the board shall set a date for a hearing to begin
 2 not more than 120 days after the receipt. Except for those
 3 hearings involving applications submitted for facilities as
 4 defined in (b) and (c) of 75-20-204~~(f)~~ 15-20-104~~(8)~~ 1.
 5 certification hearings shall be conducted by the board in
 6 the county seat of Lewis and Clark County or the county in
 7 which the facility or the greater portion thereof is to be
 8 located.

9 (2) If the department does not participate as an
 10 active party in a certification proceeding, it shall act as
 11 the staff for the board throughout the decisionmaking
 12 process and the board may request the department to present
 13 testimony or cross-examine witnesses as the board considers
 14 necessary and appropriate.

15 (3) At the request of the applicant, the duly
 16 authorized state air and water quality agencies shall hold
 17 any required permit hearings required under laws
 18 administered by those agencies in conjunction with the board
 19 certification hearings. The time periods established for
 20 reviewing an application and for issuing a decision on
 21 certification of a proposed facility under this chapter
 22 supersede the time periods specified in other laws
 23 administered by the duly authorized state air and water
 24 quality agencies."

25 Section 10. Section 75-20-219, MCA, is amended to

1 read:

2 "75-20-219. Hearing on amendment of application
 3 certificate. (1) On an application for an amendment of a
 4 certificate, the board shall hold a hearing in the same
 5 manner as a hearing is held on an application for a
 6 certificate if the board determines that the proposed change
 7 in the facility would result in any material increase in any
 8 environmental impact of the facility or a substantial change
 9 in the location of all or a portion of the facility other
 10 than as provided in the alternates set forth in the
 11 application.

12 (2) If an application for an amendment by an applicant
 13 results from the request of an affected landowner upon whose
 14 land the facility is located or from the requirements of
 15 other government agencies and if the amendment would not
 16 result in any material increase in any environmental impact
 17 and if the amendment would not result in a substantial
 18 change in the location of all or a portion of the facility,
 19 the board may, upon recommendation by the department, grant
 20 an amendment to the certificate upon such terms, conditions,
 21 or modifications as the board considers appropriate. The
 22 board's decision shall be made after 30 days' notice to
 23 affected parties.

24 (3) A decision made by the board pursuant to
 25 subsections (1) and (2) above is subject to judicial review

1 under the Montana Administrative Procedure Act."

2 Section 11. Section 75-20-220, MCA, is amended to
3 read:

4 "75-20-220. Hearing examiner -- restrictions --
5 duties. (1) If the board appoints a hearing examiner to
6 conduct any certification proceedings under this chapter,
7 the hearing examiner may not be a member of the board or an
8 employee of the department, or a member or employee of a
9 duly authorized state air and water quality agency. A
10 hearing examiner, if any, shall be appointed by the board
11 within 20 days after the department's report has been filed
12 with the board. If a duly authorized state air and water
13 quality agency permit hearing is required, the board and the
14 agency shall mutually agree on the appointment of a hearing
15 examiner.

16 (2) A prehearing conference shall be held following
17 notice within 60 days after the department's report has been
18 filed with the board.

19 (3) The prehearing conference shall be organized and
20 supervised by the hearing examiner.

21 (4) The prehearing conference shall be directed toward
22 a determination of the issues presented by the applications,
23 the department's report, and an identification of the
24 witnesses and documentary exhibits to be presented by the
25 active parties who intend to participate in the hearing.

1 (5) The hearing examiner shall require the active
2 parties to submit, in writing, and serve upon the other
3 active parties, all direct testimony which they propose and
4 any studies, investigations, reports, or other exhibits that
5 any active party wishes the board to consider. These written
6 exhibits and any documents that the board itself wishes to
7 use or rely on shall be submitted and served in like manner,
8 at least 20 days prior to the date set for the hearing. For
9 good cause shown, the hearing examiner may allow the
10 introduction of new evidence at any time.

11 (6) Public witnesses and other interested public
12 parties may appear and present oral testimony at the hearing
13 or submit written testimony to the hearing examiner at the
14 time of their appearance. These witnesses are subject to
15 cross-examination.

16 (7) The hearing examiner shall issue a prehearing
17 order specifying the issues of fact and of law, identifying
18 the witnesses of the active parties, naming the public
19 witnesses and other interested parties who have submitted
20 written testimony, scheduling times for the presentation of
21 oral testimony by public parties, outlining the order in
22 which the hearing shall proceed, and establishing any other
23 special rules to expedite the hearing which the hearing
24 examiner may adopt.

25 (8) At the conclusion of the hearing, the hearing

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1 examiner shall declare the hearing closed and shall within
 2 90 days of that date prepare and submit to the board and
 3 the duly authorized state air and water quality agency, if
 4 necessary, proposed findings of facts, conclusions of law,
 5 and a recommended decision.

6 (9) The hearing examiner appointed to conduct a
 7 certification proceeding under this chapter shall insure
 8 that the time of the proceeding, from the date the
 9 department's report is filed with the board until the
 10 recommended report and order of the examiner is filed with
 11 the board, does not exceed 12 calendar months unless
 12 extended by the board for good causes."

13 Section 12. Section 75-20-221, MCA, is amended to
 14 read:

15 "75-20-221. Parties to certification proceeding --
 16 waiver -- attorney general. (1) The parties to a
 17 certification proceeding ~~may~~ include as active parties:

18 (a) the applicant;

19 (b) each municipality, political entity and government
 20 agency entitled to receive service of a copy of the
 21 application under 75-20-211(3);

22 (c) any person residing in a municipality entitled to
 23 receive service of a copy of the application under
 24 75-20-211(5);

25 (d) any nonprofit organization formed in whole or in

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

7 (e) any other interested person who establishes an
 8 interest in the proceeding; and
 9 (f) the department and
 10 (g) the attorney general.

11 (2) The parties to a certification proceeding may also
 12 include as public parties, any Montana citizen and any
 13 party referred to in (b), (c), (d), or (e) of subsection
 14 (1).

15 ~~(2)(3)~~ Any party identified in (b), (c), (d), and (e) of subsection (2) waives his ~~the~~ right to be a party if he
 16 the party does not participate orally at in the hearing
 17 before the board.

18 (4) The attorney general shall participate as an
 19 active party in certification proceedings involving
 20 facilities described in 75-20-104(8)(a).

21 (5) The attorney general shall be the representative
 22 of the public interest on all matters raised in the hearings
 23 related to the criteria established in 75-20-301 and
 24 75-20-503."

1 Section 13. Section 75-20-222, MCA, is amended to
 2 read:

3 "75-20-222. Record of hearing -- procedure -- rules of
 4 evidence -- burden of proof. (1) Any studies,
 5 investigations, reports, or other documentary evidence,
 6 including those prepared by the department, which any party
 7 wishes the board to consider or which the board itself
 8 expects to utilize or rely upon shall be made a part of the
 9 record.

10 (2) A record shall be made of the hearing and of all
 11 testimony taken.

12 (3) Except as expressly modified in 75-20-220a, the the
 13 contested case procedures of the Montana Administrative
 14 Procedure Act shall apply to the hearing, except that
 15 neither common law nor statutory rules of evidence need
 16 apply. The board may make rules designed to exclude
 17 repetitive, redundant, or irrelevant testimony.

18 (4) In a certification proceeding held under this
 19 chapter, the applicant has the burden of showing by clear
 20 and convincing evidence that the application should be
 21 granted and that the criteria of 75-20-301 are met."

22 Section 14. Section 75-20-301, MCA, is amended to
 23 read:

24 "75-20-301. Decision of board -- findings necessary
 25 for certification. (1) Within 90 ~~60~~ days after the-test-day

1 of-the-hearing, submission of the recommended decision by
 2 the hearing examiner, the board shall make complete
 3 findings, issue an opinion, and render a decision upon the
 4 record, either granting or denying the application as filed
 5 or granting it upon such terms, conditions, or modifications
 6 of the construction, operation, or maintenance of the
 7 facility as the board considers appropriate.

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

11 (a) the basis of the need for the facility;
 12 (b) the nature of the probable environmental impact;
 13 (c) that the facility represents the minimum adverse
 14 environmental impact, considering the state of available
 15 technology and the nature and economics of the various
 16 alternatives;

17 (d) each of the criteria listed in 75-20-503;
 18 (e) in the case of an electric, gas, or liquid
 19 transmission line or aqueduct:

20 (i) what part, if any, of the line or aqueduct shall
 21 be located underground;

22 (ii) that the facility is consistent with regional
 23 plans for expansion of the appropriate grid of the utility
 24 systems serving the state and interconnected utility
 25 systems; and

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

3 (f) that the location of the facility as proposed
 4 conforms to applicable state and local laws and regulations
 5 issued thereunder, except that the board may refuse to apply
 6 any local law or regulation if it finds that, as applied to
 7 the proposed facility, the law or regulation is unreasonably
 8 restrictive in view of the existing technology, of factors
 9 of cost or economics, or of the needs of consumers, whether
 10 located inside or outside of the directly affected
 11 government subdivisions;

12 (g) that the facility will serve the public interest,
 13 convenience, and necessity; and

14 (h) that duly authorized state air and water quality
 15 agencies have certified that the proposed facility will not
 16 violate state and federally established standards and
 17 implementation plans. The judgments of duly authorized air
 18 and water quality agencies are conclusive on all questions
 19 related to the satisfaction of state and federal air and
 20 water quality standards.

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

24 (a) the items listed in subsections (2)(a) and (2)(b)
 25 of this section;

1 (b) the benefits to the applicant and the state
 2 resulting from the proposed facility;

3 (c) the effects of the economic activity resulting
 4 from the proposed facility;

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

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

8 (4) Considerations of need, public need, or public
 9 convenience and necessity and demonstration thereof by the
 10 applicant shall apply only to utility facilities.

11 (5) If the duly authorized state air and water quality
 12 agency is required to hold a hearing, the agency shall
 13 within 45 days after submission of the recommended decision
 14 by the hearing examiner, make complete findings, issue an
 15 opinion, and render a decision upon the record, which shall
 16 be certified to the board within 10 days. The agency
 17 decision constitutes the judgment of the agency on all
 18 questions related to the satisfaction of state and federal
 19 air and water quality standards and implementation plans.
 20 The final decision of the agency is conclusive on all
 21 matters related to the satisfaction of state and federal air
 22 and water quality standards and the decision shall include
 23 the permits required under the laws administered by the duly
 24 authorized state air and water quality agencies."

25 Section 15. Section 75-20-302, MCA, is amended to

1 read:

2 "75-20-302. Conditions imposed. If the board
 3 determines that the location of all or a part of the
 4 proposed facility should be modified, it may condition its
 5 certificate upon such modification, provided that the
 6 municipalities and persons residing therein in the area
 7 affected by the modification have been given reasonable
 8 notice of the modification."

9 Section 16. Section 75-20-304, MCA, is amended to
 10 read:

11 "75-20-304. Waiver of provisions of certification
 12 proceedings. ~~if--Any--of--the--provisions--described--in~~
 13 ~~75-20-216--through--75-20-222--and--this--part--may--be--waived--by~~
 14 ~~the--board--for--good--cause--shown--with--respect--to--applications~~
 15 ~~fitted--before--January--1--1975--Applications--for--certificates~~
 16 ~~under--this--subsection--must--be--promptly--fitted--~~

17 ~~if~~ The board may waive compliance with any of the
 18 provisions of 75-20-216 through 75-20-222, ~~75-20-501~~, and
 19 this part if the applicant makes a clear and convincing
 20 showing to the board at a public hearing that an immediate,
 21 urgent need for a facility exists and that the applicant did
 22 not have knowledge that the need for the facility existed
 23 sufficiently in advance to fully comply with the provisions
 24 of 75-20-216 through 75-20-222, ~~75-20-501~~, and this part.

25 ~~if~~ The board may waive compliance with any of the

1 provisions of this chapter upon receipt of notice by a
 2 utility or person subject to this chapter that a facility or
 3 associated facility has been damaged or destroyed as a
 4 result of fire, floods or other natural disaster or as the
 5 result of insurrection, war, or other civil disorder and
 6 there exists an immediate need for construction of a new
 7 facility or associated facility or the relocation of a
 8 previously existing facility or associated facility in order
 9 to promote the public welfare."

10 Section 17. Section 75-20-401, MCA, is amended to
 11 read:

12 "75-20-401. Additional requirements by other
 13 governmental agencies not permitted after issuance of
 14 certificate -- exceptions. (1) Notwithstanding any other
 15 law, no state or regional agency or municipality or other
 16 local government may require any approval, consent, permit,
 17 certificate, or other condition for the construction,
 18 operation, or maintenance of a facility authorized by a
 19 certificate issued pursuant to this chapter, except that the
 20 state air and water quality agency or agencies shall retain
 21 authority excluding the authority to conduct hearings and
 22 issue permits other than as herein provided, which they have
 23 or may be granted to determine compliance of the proposed
 24 facility with state and federal standards and implementation
 25 plans for air and water quality and to enforce those

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1 standards.

2 (2) This chapter does not prevent the application of
 3 state laws for the protection of employees engaged in the
 4 construction, operation, or maintenance of a facility."

5 Section 18. Section 75-20-402, MCA, is amended to
 6 read:

7 "75-20-402. Monitoring. The board ~~and the department~~
 8 ~~and the state air and water quality agencies~~ shall monitor
 9 the operations of all certificated facilities for assuring
 10 continuing compliance with this chapter and certificates
 11 issued hereunder and for discovering and preventing
 12 noncompliance with this chapter and the certificates. The
 13 applicant shall pay all expenses related to the monitoring
 14 plan established in subsection (3)(a)(v) of 75-20-303 to the
 15 extent federal funds have not been provided for such
 16 purposes."

17 Section 19. Section 75-20-406, MCA, is amended to
 18 read:

19 "75-20-406. Judicial review of board decision. (1) Any
 20 active party as defined in 75-20-221 aggrieved by the final
 21 decision of the board on an application for a certificate
 22 may obtain judicial review of that decision by the filing of
 23 a petition in a state district court of competent
 24 jurisdiction.

25 (2) The judicial review procedure shall be the same as

1 that for contested cases under the Montana Administrative
 2 Procedure Act."

3 Section 20. Section 75-20-408, MCA, is amended to
 4 read:

5 "75-20-408. Penalties for violation of chapter --
 6 civil action by attorney general. (1) (a) Whoever commences
 7 to construct or operate a facility without first obtaining a
 8 certificate required under 75-20-201 or a waiver thereof
 9 under 75-20-304(3); having first obtained a certificate,
 10 constructs, operates, or maintains a facility other than in
 11 compliance with the certificate; violates any other
 12 provision of this chapter or any rule or order adopted
 13 thereunder; knowingly submits false information in any
 14 report, 10-year plan or application required by this chapter
 15 or rule or order adopted thereunder; or causes any of the
 16 aforementioned acts to occur shall be liable to a civil
 17 penalty of not more than \$10,000 for each violation.

18 (b) Each day of a continuing violation shall
 19 constitute a separate offense.

20 (c) The penalty shall be recoverable in a civil suit
 21 brought by the attorney general on behalf of the state in
 22 the first district court of Montana.

23 (2) Whoever knowingly and willfully violates
 24 subsection (1) shall be fined not more than \$10,000 for each
 25 violation or imprisoned for not more than 1 year, or both.

1 Each day of a continuing violation shall constitute a
 2 separate offense.

3 (3) In addition to any penalty provided in subsections
 4 (1) or (2), whenever the department determines that a person
 5 is violating or is about to violate any of the provisions of
 6 this section, it may refer the matter to the attorney
 7 general who may bring a civil action on behalf of the state
 8 in the first district court of Montana for injunctive or
 9 other appropriate relief against the violation and to
 10 enforce this chapter or a certificate issued hereunder. Upon
 11 a proper showing, a permanent or preliminary injunction or
 12 temporary restraining order shall be granted without bond.

13 (4) The department shall also enforce this chapter and
 14 bring legal actions to accomplish the enforcement through
 15 its own legal counsel.

16 (5) All fines and penalties collected shall be
 17 deposited in the earmarked revenue fund for the use of the
 18 department in administering this chapter.

19 Section 21. Section 75-20-501, MCA, is amended to
 20 read:

21 "75-20-501. Annual long-range plan submitted --
 22 contents -- available to public. (1) Each utility and each
 23 person contemplating the construction of a facility within
 24 this state in the ensuing 10 years shall furnish annually to
 25 the department for its review a long-range plan for the

1 construction and operation of facilities.

2 (2) The plan shall be submitted on April 1 of each
 3 year and shall include the following:

4 (a) the general location, size, and type of all
 5 facilities to be owned and operated by the utility or person
 6 whose construction is projected to commence during the
 7 ensuing 10 years, as well as those facilities to be removed
 8 from service during the planning period;

9 (b) in the case of utility facilities, a description
 10 of efforts by the utility or person to coordinate the plan
 11 with other utilities or persons so as to provide a
 12 coordinated regional plan for meeting the energy needs of
 13 the region;

14 (c) a description of the efforts to involve
 15 environmental protection and land use planning agencies in
 16 the planning process, as well as other efforts to identify
 17 and minimize environmental problems at the earliest possible
 18 stage in the planning process;

19 (d) projections of the demand for the service rendered
 20 by the utility or person and explanation of the basis for
 21 those projections and a description of the manner and extent
 22 to which the proposed facilities will meet the projected
 23 demand; and

24 (e) additional information that the board by rule or
 25 the department on its own initiative or upon the advice of

1 interested state agencies might request in order to carry
 2 out the purposes of this chapter.

3 (3) The plan shall be made available to the public by
 4 the department. The utility or person shall give public
 5 notice throughout the state of its plan by filing the plan
 6 with the environmental quality council, the department of
 7 health and environmental sciences, the department of
 8 highways, the department of public service regulation, the
 9 department of state lands, and the department of community
 10 affairs. Citizen environmental protection and resource
 11 planning groups and other interested persons may obtain a
 12 plan by written request and payment therefor to the
 13 department.

14 (4) A rural electric cooperative may furnish the
 15 department with a copy of the long-range plan and 2-year
 16 work plan required to be completed under federal rural
 17 electrification requirements in lieu of the long-range plan
 18 required in subsection (3).

19 (5) No person may file an application for a facility
 20 unless the facility had been adequately identified in a
 21 long-range plan at least 2 years prior to acceptance of an
 22 application by the department."

23 Section 22. Section 75-20-503, MCA, is amended to
 24 read:

25 "75-20-503. Environmental factors evaluated. In

1 evaluating long-range plans, conducting 5-year site reviews,
 2 and evaluating applications for certificates, the board and
 3 department shall give consideration to the following list of
 4 environmental factors, where applicable, and may by rule add
 5 to the categories of this section:

6 (1) energy needs:
 7 (a) growth in demand and projections of need;
 8 (b) availability and desirability of alternative
 9 sources of energy;
 10 (c) availability and desirability of alternative
 11 sources of energy in lieu of the proposed facility;
 12 (d) promotional activities of the utility which may
 13 have given rise to the need for this facility;
 14 (e) socially beneficial uses of the output of this
 15 facility, including its uses to protect or enhance
 16 environmental quality;
 17 (f) conservation activities which could reduce the
 18 need for more energy;

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

22 (2) land use impacts:
 23 (a) area of land required and ultimate use;
 24 (b) consistency with areawide state and regional land
 25 use plans;

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

1 industries or other activities to utilize the waste heat
 2 from facilities;
 3 (3) water resources impacts:
 4 (a) hydrologic studies of adequacy of water supply and
 5 impact of facility on streamflow, lakes, and reservoirs;
 6 (b) hydrologic studies of impact of facilities on
 7 groundwater;
 8 (c) cooling system evaluation, including consideration
 9 of alternatives;
 10 (d) inventory of effluents, including physical,
 11 chemical, biological, and radiological characteristics;
 12 (e) hydrologic studies of effects of effluents on
 13 receiving waters, including mixing characteristics of
 14 receiving waters, changed evaporation due to temperature
 15 differentials, and effect of discharge on bottom sediments;
 16 (f) relationship to water quality standards;
 17 (g) effects of changes in quantity and quality on
 18 water use by others, including both withdrawal and in situ
 19 uses;
 20 (h) relationship to projected uses;
 21 (i) relationship to water rights;
 22 (j) effects on plant and animal life, including algae,
 23 macroinvertebrates, and fish population;
 24 (k) effects on unique or otherwise significant
 25 ecosystems, e.g., wetlands;

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1 (1) monitoring programs;
 2 (4) air quality impacts;
 3 (a) meteorology--wind direction and velocity, ambient
 4 temperature ranges, precipitation values, inversion
 5 occurrence, other effects on dispersion;
 6 (b) topography--factors affecting dispersion;
 7 (c) standards in effect and projected for emissions;
 8 (d) design capability to meet standards;
 9 (e) emissions and controls;
 10 (i) stack design;
 11 (ii) particulates;
 12 (iii) sulfur oxides;
 13 (iv) oxides of nitrogen; and
 14 (v) heavy metals, trace elements, radioactive
 15 materials, and other toxic substances;
 16 (f) relationship to present and projected air quality
 17 of the area;
 18 (g) monitoring program;
 19 (5) solid wastes impact impacts;
 20 (a) solid waste inventory;
 21 (b) disposal program;
 22 (c) relationship of disposal practices to
 23 environmental quality criteria;
 24 (d) capacity of disposal sites to accept projected
 25 waste loadings;

1 (6) radiation impacts;
 2 (a) land use controls over development and population;
 3 (b) wastes and associated disposal program for solid,
 4 liquid, radioactive, and gaseous wastes;
 5 (c) analyses and studies of the adequacy of
 6 engineering safeguards and operating procedures;
 7 (d) monitoring--adequacy of devices and sampling
 8 techniques;
 9 (7) noise impacts;
 10 (a) construction period levels;
 11 (b) operational levels;
 12 (c) relationship of present and projected noise levels
 13 to existing and potential stricter noise standards;
 14 (d) monitoring--adequacy of devices and methods."
 15 Section 23. Section 75-2-211, MCA, is amended to read:
 16 "75-2-211. Permits for construction, installation,
 17 alteration, or use. (1) The department shall provide for the
 18 issuance, suspension, revocation, and renewal of a permit
 19 issued under this section.
 20 (2) Not later than 180 days before construction begins
 21 of any machine, equipment, device, or facility which the
 22 board finds may directly or indirectly cause or contribute
 23 to air pollution or which is intended primarily to prevent
 24 or control the emission of air pollutants and not later than
 25 120 days before installation, alteration, or use begins, the

1 owner or operator shall file with the department the
 2 appropriate permit application on forms available from the
 3 department.

4 (3) The department may, for good cause shown, waive
 5 the provisions of subsection (2) or shorten the time
 6 required for filing the appropriate applications.

7 (4) The department shall require that applications for
 8 permits be accompanied by any plans, specifications, and
 9 other information it considers necessary.

10 (5) An application is not considered filed until the
 11 applicant has submitted all information and completed all
 12 application forms required by subsections (2), (3), and (4).
 13 However, if the department fails to notify the applicant in
 14 writing within 30 days after the purported filing of an
 15 application that the application is incomplete and fails to
 16 list the reasons why the application is considered
 17 incomplete, the application is considered filed as of the
 18 date of the purported filing.

19 (6) Where an application for a permit requires the
 20 compilation of an environmental impact statement under the
 21 Montana Environmental Policy Act, the department shall
 22 notify the applicant in writing within 180 days of the
 23 receipt of a filed application, as defined in subsection
 24 (5), of the approval or denial of the application. However,
 25 where an application does not require the compilation of an

1 environmental impact statement, the department shall notify
 2 the applicant in writing within 60 days of the receipt of a
 3 filed application, as defined in subsection (5), of the
 4 approval or denial of the application.

5 (7) When the department approves or denies the
 6 application for a permit under this section, a person who is
 7 jointly or severally adversely affected by the department's
 8 decision may request, within 15 days after the department
 9 renders its decision, upon affidavit setting forth the
 10 grounds therefor, a hearing before the board. A hearing
 11 shall be held under the provisions of the Montana
 12 Administrative Procedure Act.

13 (8) The department's decision on the application is
 14 not final unless 15 days have elapsed and there is no
 15 request for a hearing under this section. The filing of a
 16 request for a hearing postpones the effective date of the
 17 department's decision until the conclusion of the hearing
 18 and issuance of a final decision by the board.

19 191. For a facility defined in 75-20-104, an
 20 application for a permit under this chapter must be filed so
 21 as to insure coordination and compliance with the provisions
 22 of Title 75, chapter 20, and this chapter."

23 NEW SECTION Section 24. Order not stayed by appeal
 24 -- stay or suspension by court -- limitations.
 25 Notwithstanding any contrary provision in the law, the

1 pendency of an appeal from a board order does not
2 automatically stay or suspend the operation of the order.
3 During the pendency of the appeal, the court may upon motion
4 by one of the parties stay or suspend, in whole or in part,
5 the operation of the board's orders on terms the court
6 considers just. The court's action must be in accordance
7 with the practice of courts exercising equity jurisdiction,
8 subject to the following limitations:

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

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

16 NEW SECTION. Section 25. Surety bond -- other
17 security. If an order of the board is stayed or suspended,
18 the court may require a bond with good and sufficient surety
19 conditioned that the party petitioning for review answer for
20 all damages caused by the delay in enforcing the order of
21 the board. If the party petitioning for review prevails upon
22 final resolution of an appeal, he does not forfeit bond nor
23 is he responsible for damages caused by delay.

24 Section 26. Codification. It is the intent of the
25 legislature that sections 24 and 25 become an integral part

1 of Title 75, chapter 20, MCA, and that the provisions of
2 that chapter apply to sections 24 and 25.
3 Section 27. Repealer. Sections 75-20-1101 through
4 75-20-1105, MCA, are repealed.

-End-

1 *House BILL NO. 883*
2 INTRODUCED BY *Brian D. Sully*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
6 SECTIONS 75-2-211, 75-20-103, 75-20-104, 75-20-203,
7 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-218 THROUGH
8 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401,
9 75-20-402, 75-20-406, 75-20-408, 75-20-501, AND 75-20-503,
10 MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH 75-20-1109,
11 MCA."

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

13 Section 1. Section 75-20-103, MCA, is amended to read:
14 "75-20-103. Chapter supersedes other laws or rules.
15 This chapter supersedes other laws or regulations ~~except as~~
16 ~~provided in 75-20-401.~~ If any provision of this chapter is
17 in conflict with any other law of this state or any rule
18 promulgated thereunder, this chapter shall govern and
19 control and the other law or rule shall be deemed superseded
20 for the purpose of this chapter. ~~Amendments to this chapter~~
21 ~~shall have the same effect.~~"

22 Section 2. Section 75-20-104, MCA, is amended to read:
23 "75-20-104. Definitions. In this chapter, unless the
24 context requires otherwise the following definitions apply:

1 (1) "Addition thereto" means the installation of new
2 machinery and equipment which would significantly change the
3 conditions under which the certificate was issued.
4 (2) "Application" means an application for a
5 certificate submitted in accordance with this chapter and
6 the rules adopted hereunder.

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

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

16 (5) "Certificate" means the certificate of
17 environmental compatibility and public need issued by the
18 board under this chapter that is required for the
19 construction or operation of a facility.

20 (6) "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 70, chapter 30, 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 (b) or (c) of subsection ~~77~~ 181,
 14 including upgrading to a design capacity covered by
 15 subsection ~~77~~ 181(b), except that the term does not include
 16 normal maintenance or repair of an existing facility.

17 ~~77~~ "Department" means the department of natural
 18 resources and conservation provided for in Title 2, chapter
 19 15, part 33.

20 ~~77~~ "Facility" means:

21 (a) each plant, unit, or other facility and
 22 associated facilities, except for oil and gas refineries,
 23 designed for or capable of:

24 (i) generating 50 megawatts of electricity or more or
 25 any addition thereto (except pollution control facilities

1 approved by the department of health and environmental
 2 sciences added to an existing plant) having an estimated
 3 cost in excess of \$250,000;

4 (ii) producing 25 million cubic feet ~~or more~~ of gas
 5 derived from coal per day ~~or more~~ or any addition thereto
 6 having an estimated cost in excess of \$250,000;

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

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

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

15 (b) each electric transmission line and associated
 16 facilities of a design capacity of more than 69 kilovolts,
 17 except that the term does not include an electric
 18 transmission line and associated facilities of a design
 19 capacity of 230 kilovolts or less and 10 miles or less in
 20 length;

21 (c) each pipeline and associated facilities designed
 22 for or capable of transporting gas, water, or liquid
 23 hydrocarbon products from or to a facility located within or
 24 without this state of the size indicated in subsection ~~77~~
 25 181(a) of this section;

1 (d) any use of geothermal resources, including the use
 2 of underground space in existence or to be created, for the
 3 creation, use, or conversion of energy, designed for or
capable of producing geothermally derived power equivalent
to 25 million Btu per hour or more or any addition thereto
having an estimated cost in excess of \$250,000.

7 (e) any underground in situ gasification of coal.
 8 ~~§87--"Municipality"--means--any--county--or--municipality~~
 9 ~~within--this--state.~~

10 (9) "Person" means any individual, group, firm,
 11 partnership, corporation, cooperative, associations,
 12 government subdivision, government agency, local government,
 13 or other organization or entity.

14 (10) "Transmission substation" means any structures,
 15 device, or equipment assemblage, commonly located and
 16 designed for voltage regulation, circuit protection, or
 17 switching necessary for the construction or operation of a
 18 proposed transmission line.

19 ~~§87(11) "Utility" means any person engaged in any~~
 20 aspect of the production, storage, sale, delivery, or
 21 furnishing of heat, electricity, gas, hydrocarbon products,
 22 or energy in any form for ultimate public use."

23 Section 3. Section 75-20-203, MCA, is amended to read:
 24 "75-20-203. Certificate transferable. A certificate
 25 may be transferred, subject to the approval of the

1 department board, to a person who agrees to comply with the
 2 terms, conditions, and modifications contained therein."

3 Section 4. Section 75-20-211, MCA, is amended to read:
 4 "75-20-211. Application -- filing and contents --
 5 proof of service and notice. (1) (a) An applicant for a
 6 certificate shall file with the department a--verified an
 7 application, in such form as the board by rule or the
 8 department by order prescribes, containing the following
 9 information:

10 (i) a description of the location and of the facility
 11 to be built thereon;
 12 (ii) a summary of any studies which have been made of
 13 the environmental impact of the facility;
 14 (iii) a statement explaining the need for the facility;
 15 (iv) a description of any reasonable alternate location
 16 or locations for the proposed facility, a general
 17 description of the comparative merits and detriments of each
 18 location submitted, and a statement of the reasons why the
 19 primary proposed location is best suited for the facility;
 20 and
 21 (v) such other information as the applicant considers
 22 relevant or as the board by rule or the department by order
 23 requires.

24 (b) A copy or copies of the studies referred to in
 25 subsection (1)(a)(ii) above shall be filed with the

1 department, if ordered, and shall be available for public
 2 inspection.

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

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 county commissioner, city or county planning boards
 11 and federal agencies charged with the duty of protecting the
 12 environment or of planning land use in the area in which any
 13 portion of the proposed facility is to may be located, both
 14 as primarily and as alternatively proposed, and on the
 15 following state government agencies:

16 1a) environmental quality council;
 17 1b) department of health and environmental sciences;
 18 1c) department of public service regulation;
 19 1d) department of fish and game;
 20 1e) department of state lands;
 21 1f) department of community affairs;
 22 1g) department of highways;
 23 1h) department of revenue;
 24 1i) the attorney general.
 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 municipality--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 area or alternative areas in which any portion of the
 11 proposed facility may be located, by publication of a
 12 summary of the application in those newspapers that will
 13 substantially inform those persons of the application.

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

18 Section 5. Section 75-20-213, MCA, is amended to read:
 19 "75-20-213. Amendment -- restrictions. (1) An
 20 application for an amendment of an application or a
 21 certificate shall be in such form and contain such
 22 information as the board by rule or the department by order
 23 prescribes. Notice of such an application shall be given as
 24 set forth in (3), (4), and (5) of 75-20-211.
 25 (2) If--an--amendment--to--an--original--application--would

1 result-in-a-substantial-change-of-the-original-application
 2 An application for an amendment of an application is
 3 required if the department determines that there is a
 4 substantial change in the location, design, or operation of
 5 all or a portion of the facility other than as provided in
 6 the alternatives set forth in the original application. Such
 7 such an amendment shall be considered as a new application
 8 and a new filing fee shall be required.

9 131. If the department determines that a proposed
 10 change in the location, design, or operation of a proposed
 11 facility results from the requirements of other government
 12 agencies and would result in less environmental impact, an
 13 application for an amendment is required. However, if the
 14 proposed change is such that it prevents the department from
 15 carrying out its duties and responsibilities under this
 16 chapter, the department shall require a new application and
 17 filing fees."

18 Section 6. Section 75-20-214, MCA, is amended to read:
 19 "75-20-214. Notice of intent to file. A potential
 20 applicant for a certificate may file a notice of intent to
 21 file an application for a certificate for a facility defined
 22 in 75-20-104ff; 75-20-104(8) at least 12 months prior to the
 23 actual filing of an application. The notice of intent shall
 24 specify the type and size of facility to be applied for, its
 25 preferred location, a description of reasonable alternative

1 locations, and such information as the board by rule or
 2 department by order requires. An applicant complying with
 3 this section is entitled to a 5% reduction of the filing fee
 4 required under 75-20-215."

5 Section 7. Section 75-20-215, MCA, is amended to read:
 6 "75-20-215. Filing fee -- accountability -- refund --
 7 use. (1) A filing fee shall be deposited in the earmarked
 8 revenue fund for the use of the department in administering
 9 this chapter. The applicant shall pay to the department a
 10 filing fee with-the-application based upon the estimated
 11 cost of the facility according to the declining scale which
 12 follows:

13 (a) 2% of any estimated cost up to \$1 million; plus
 14 (b) 1% of any estimated cost over \$1 million and up to
 15 \$20 million; plus
 16 (c) 0.5% of any estimated cost over \$20 million and up
 17 to \$100 million; plus
 18 (d) 0.25% of any amount of estimated cost over \$100
 19 million and up to \$300 million; plus
 20 (e) .125% of any amount of estimated cost over \$300
 21 million.

22 121. (a) The total filing fee shall be submitted to the
 23 department upon submission of an application unless the
 24 applicant and the department have previously agreed to a
 25 schedule of payments whereby a filing fee may be paid in

1 installments.

2 131 If the applicant and department agree to the
 3 payment of a filing fee on the installment basis, the
 4 revenue derived from the filing fee must be sufficient to
 5 enable the department, the board, the duly authorized state
 6 air and water quality agencies, the agencies listed in
 7 75-20-216(4), and the attorney general to carry out their
 8 responsibilities under this chapter.

9 131 If an agreement is not entered but the applicant
 10 desires to pay the filing fee in installments, the applicant
 11 may pay the filing fee in accordance with a schedule of
 12 installments developed by the department, provided that no
 13 one installment may exceed 20% of the total filing fee
 14 provided for in subsection (1).

15 131 The estimated cost of upgrading an existing
 16 transmission substation may not be included in the estimated
 17 cost of a proposed facility for the purpose of calculating a
 18 filing fee.

19 131 If an application consists of a combination of
 20 two or more facilities, the filing fee shall be based on the
 21 total estimated cost of the combined facilities.

22 131 The applicant is entitled to an accounting of
 23 moneys expended and to a refund with interest at the rate of
 24 6% a year of that portion of the filing fee not expended by
 25 the department in carrying out its responsibilities under

1 this chapter. A refund shall be made after all
 2 administrative and judicial remedies have been exhausted by
 3 all parties to the certification proceedings.

4 ~~131~~ The revenues derived from filing fees shall be
 5 used by the department in compiling the information required
 6 for rendering a decision on a certificate and for carrying
 7 out its and the board's other responsibilities under this
 8 chapter with respect to the facility covered by the
 9 certificate for a period not to exceed 5 years after the
 10 certificate is issued for facilities defined in
 11 75-20-204(7)(b) and (e) or not to exceed 10 years after the
 12 certificate is issued for facilities defined in
 13 75-20-204(7)(e), (f), and (g), except that a minimum of 23
 14 of the revenues derived shall be allocated to the attorney
 15 general by the department if he becomes an active party to
 16 the certification proceedings.

17 Section 8. Section 75-20-216, MCA, is amended to read:

18 "75-20-216. Study, evaluation, and report on proposed
 19 facility -- assistance by other agencies. (1) After receipt
 20 of an application the department shall within 30 days
 21 notify the applicant in writing that:

22 (a) the application is in compliance and is accepted
 23 as complete; or

24 (b) the application is not in compliance and list the
 25 deficiencies therein; and upon correction of these

1 deficiencies and resubmission by the applicant, the
 2 department shall within 30 days notify the applicant in
 3 writing that the application is in compliance and is
 4 accepted as complete.

5 (2) If an application is accepted as complete within
 6 60 days of the original receipt by the department under
 7 subsection (1)(a), the application's effective filing and
 8 receipt date relates back to the original date the
 9 application was filed. In all other cases, the effective
 10 filing and receipt date is the date on which the department
 11 accepts the application as complete.

12 (3) Upon receipt of an application complying with
 13 75-20-211 through 75-20-215, and this section, the
 14 department shall commence an intensive study and evaluation
 15 of the proposed facility and its effects, considering all
 16 the criteria listed in 75-20-301 and 75-20-503. The
 17 department shall use to the extent it considers applicable,
 18 valid and useful existing studies and reports submitted by
 19 the applicant or compiled by a state or federal agency.

20 (4) Within 2 years following receipt acceptance of
 21 an application for a facility as defined in (a) and (d) of
 22 75-20-104~~(7)~~ 75-20-104~~(8)~~ and for a facility as defined in
 23 (b) and (c) of 75-20-104~~(7)~~ 75-20-104~~(8)~~ which is more than
 24 30 miles in length and within 1 year for a facility as
 25 defined in (b) and (c) of 75-20-104~~(7)~~ 75-20-104~~(8)~~ which is

1 30 miles or less in length, the department shall make a
 2 report to the board which shall contain the department's
 3 studies, evaluations, recommendations, other pertinent
 4 documents resulting from its study and evaluation, and the
 5 ~~not an environmental impact statement or analysis prepared~~
 6 ~~pursuant to the Montana Environmental Policy Act, if any.~~
 7 If the application is for a combination of two or more
 8 facilities, the department shall make its report to the
 9 board within the greater of the lengths of time provided for
 10 in this subsection for either of the facilities.

11 (5) The departments of health and environmental
 12 sciences, highways, community affairs, fish and game, state
 13 lands, ~~revenues~~ and public service regulation shall report
 14 to the department information relating to the impact of the
 15 proposed site on each department's area of expertise. The
 16 report may include opinions as to the advisability of
 17 granting, denying, or modifying the certificate. The
 18 department shall allocate funds obtained from filing fees to
 19 the departments making reports to reimburse them for the
 20 costs of compiling information and issuing the required
 21 report.

22 Section 9. Section 75-20-218, MCA, is amended to read:
 23 "75-20-218. Hearing date -- location -- department to
 24 act as staff -- hearings to be held jointly. (1) Upon
 25 receipt of the department's report submitted under

1 75-20-216, the board shall set a date for a hearing to begin
 2 not more than 120 days after the receipt. Except for those
 3 hearings involving applications submitted for facilities as
 4 defined in (b) and (c) of 75-20-204~~(7)~~ 75-20-104(8),
 5 certification hearings shall be conducted by the board in
 6 the county seat of Lewis and Clark County or the county in
 7 which the facility or the greater portion thereof is to be
 8 located.

9 (2) If the department does not participate as an
 10 active party in a certification proceeding, it shall act as
 11 the staff for the board throughout the decisionmaking
 12 process and the board may request the department to present
 13 testimony or cross-examine witnesses as the board considers
 14 necessary and appropriate.

15 (3) At the request of the applicant, the duly
 16 authorized state air and water quality agencies shall hold
 17 any required permit hearings required under laws
 18 administered by these agencies in conjunction with the board
 19 certification hearing. The time periods established for
 20 reviewing an application and for issuing a decision on
 21 certification of a proposed facility under this chapter
 22 supersede the time periods specified in other laws
 23 administered by the duly authorized state air and water
 24 quality agencies."

25 Section 10. Section 75-20-219, MCA, is amended to

1 read:

2 "75-20-219. Hearing on amendment of application
 3 certificate. (1) On an application for an amendment of a
 4 certificate, the board shall hold a hearing in the same
 5 manner as a hearing is held on an application for a
 6 certificate if the board determines that the proposed change
 7 in the facility would result in any material increase in any
 8 environmental impact of the facility or a substantial change
 9 in the location of all or a portion of the facility other
 10 than as provided in the alternates set forth in the
 11 application.

12 (2) If an application for an amendment by an applicant
 13 results from the request of an affected landowner upon whose
 14 land the facility is located or from the requirements of
 15 other government agencies and if the amendment would not
 16 result in any material increase in any environmental impact
 17 and if the amendment would not result in a substantial
 18 change in the location of all or a portion of the facility,
 19 the board may, upon recommendation by the department, grant
 20 an amendment to the certificate upon such terms, conditions,
 21 or modifications as the board considers appropriate. The
 22 board's decision shall be made after 30 days' notice to
 23 affected parties.

24 (3) A decision made by the board pursuant to
 25 subsections (1) and (2) above is subject to judicial review

1 under the Montana Administrative Procedure Act."

2 Section 11. Section 75-20-220, MCA, is amended to
3 read:

4 "75-20-220. Hearing examiner -- restrictions --
5 duties. (1) If the board appoints a hearing examiner to
6 conduct any certification proceedings under this chapter,
7 the hearing examiner may not be a member of the board or, an
8 employee of the department, or a member or employee of a
9 duly authorized state air and water quality agency. A
10 hearing examiner, if any, shall be appointed by the board
11 within 20 days after the department's report has been filed
12 with the board. If a duly authorized state air and water
13 quality agency permit hearing is required, the board and the
14 agency shall mutually agree on the appointment of a hearing
15 examiner.

16 (2) A prehearing conference shall be held following
17 notice within 60 days after the department's report has been
18 filed with the board.

19 (3) The prehearing conference shall be organized and
20 supervised by the hearing examiner.

21 (4) The prehearing conference shall be directed toward
22 a determination of the issues presented by the application,
23 the department's report, and an identification of the
24 witnesses and documentary exhibits to be presented by the
25 active parties who intend to participate in the hearing.

1 (5) The hearing examiner shall require the active
2 parties to submit in writing and serve upon the other
3 active parties all direct testimony which they propose and
4 any studies, investigations, reports, or other exhibits that
5 any active party wishes the board to consider. These written
6 exhibits and any documents that the board itself wishes to
7 use or rely on shall be submitted and served in like manner,
8 at least 20 days prior to the date set for the hearing. For
9 good cause shown, the hearing examiner may allow the
10 introduction of new evidence at any time.

11 (6) Public witnesses and other interested public
12 parties may appear and present oral testimony at the hearing
13 or submit written testimony to the hearing examiner at the
14 time of their appearance. These witnesses are subject to
15 cross-examination.

16 (7) The hearing examiner shall issue a prehearing
17 order specifying the issues of fact and of law, identifying
18 the witnesses of the active parties, naming the public
19 witnesses and other interested parties who have submitted
20 written testimony, scheduling times for the presentation of
21 oral testimony by public parties, outlining the order in
22 which the hearing shall proceed, and establishing any other
23 special rules to expedite the hearing which the hearing
24 examiner may adopt.

25 (8) At the conclusion of the hearing, the hearing

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1 examiner shall declare the hearing closed and shall, within
 2 90 days of that date, prepare and submit to the board and
 3 the duly authorized state air and water quality agency, if
 4 necessary, proposed findings of fact, conclusions of law
 5 and a recommended decision.

6 (9) The hearing examiner appointed to conduct a
 7 certification proceeding under this chapter shall insure
 8 that the time of the proceedings from the date the
 9 department's report is filed with the board until the
 10 recommended report and order of the examiner is filed with
 11 the board, does not exceed 12 calendar months unless
 12 extended by the board for good cause."

13 Section 12. Section 75-20-221, MCA, is amended to
 14 read:

15 "75-20-221. Parties to certification proceeding --
 16 waiver -- attorney general. (1) The parties to a
 17 certification proceeding may include as active parties:

18 (a) the applicant;

19 (b) each municipality political entity and government
 20 agency entitled to receive service of a copy of the
 21 application under 75-20-211(3);

22 (c) any person residing in a municipality entitled to
 23 receive service of a copy of the application under
 24 75-20-211(5);

25 (d) any nonprofit organization formed in whole or in

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

7 (e) any other interested person who establishes an
 8 interest in the proceeding; and
 9 (f) the department; and
 10 (g) the attorney general.

11 (2) The parties to a certification proceeding may also
 12 include as public parties, any Montana citizen and any
 13 party referred to in (b), (c), (d), or (g) of subsection
 14 (1).

15 (2) Any party identified in (b), (c), (d), and (g) of subsection (1) waives his right to be a party if he
 16 the party does not participate orally at the hearing
 17 before the board.

18 (4) The attorney general shall participate as an
 19 active party in certification proceedings involving
 20 facilities described in 75-20-104(8)(a).

21 (5) The attorney general shall be the representative
 22 of the public interest on all matters raised in the hearings
 23 related to the criteria established in 75-20-301 and
 24 75-20-503."

1 Section 13. Section 75-20-222, MCA, is amended to
 2 read:

3 "75-20-222. Record of hearing -- procedure -- rules of
 4 evidence -- burden of proof. (1) Any studies,
 5 investigations, reports, or other documentary evidence,
 6 including those prepared by the department, which any party
 7 wishes the board to consider or which the board itself
 8 expects to utilize or rely upon shall be made a part of the
 9 record.

10 (2) A record shall be made of the hearing and of all
 11 testimony taken.

12 (3) Except as expressly modified in 75-20-220a the the
 13 contested case procedures of the Montana Administrative
 14 Procedure Act shall apply to the hearing, except that
 15 neither common law nor statutory rules of evidence need
 16 apply. The board may make rules designed to exclude
 17 repetitive, redundant, or irrelevant testimony.

18 (4) In a certification proceeding held under this
 19 chapter, the applicant has the burden of showing by clear
 20 and convincing evidence that the application should be
 21 granted and that the criteria of 75-20-301 are met."

22 Section 14. Section 75-20-301, MCA, is amended to
 23 read:

24 "75-20-301. Decision of board -- findings necessary
 25 for certification. (1) Within 90 days after the test day

1 of-the-hearing, submission of the recommended decision by
 2 the hearing examiner, the board shall make complete
 3 findings, issue an opinion, and render a decision upon the
 4 record, either granting or denying the application as filed
 5 or granting it upon such terms, conditions, or modifications
 6 of the construction, operation, or maintenance of the
 7 facility as the board considers appropriate.

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

11 (a) the basis of the need for the facility;
 12 (b) the nature of the probable environmental impact;
 13 (c) that the facility represents the minimum adverse
 14 environmental impact, considering the state of available
 15 technology and the nature and economics of the various
 16 alternatives;

17 (d) each of the criteria listed in 75-20-503;
 18 (e) in the case of an electric, gas, or liquid
 19 transmission line or aqueduct:

20 (i) what part, if any, of the line or aqueduct shall
 21 be located underground;

22 (ii) that the facility is consistent with regional
 23 plans for expansion of the appropriate grid of the utility
 24 systems serving the state and interconnected utility
 25 systems; and

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

3 (f) that the location of the facility as proposed
 4 conforms to applicable state and local laws and regulations
 5 issued thereunder, except that the board may refuse to apply
 6 any local law or regulation if it finds that, as applied to
 7 the proposed facility, the law or regulation is unreasonably
 8 restrictive in view of the existing technology, of factors
 9 of cost or economics, or of the needs of consumers, whether
 10 located inside or outside of the directly affected
 11 government subdivisions;

12 (g) that the facility will serve the public interest,
 13 convenience, and necessity; and

14 (h) that duly authorized state air and water quality
 15 agencies have certified that the proposed facility will not
 16 violate state and federally established standards and
 17 implementation plans. The judgments of duly authorized air
 18 and water quality agencies are conclusive on all questions
 19 related to the satisfaction of state and federal air and
 20 water quality standards.

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

24 (a) the items listed in subsections (2)(a) and (2)(b)
 25 of this section;

1 (b) the benefits to the applicant and the state
 2 resulting from the proposed facility;

3 (c) the effects of the economic activity resulting
 4 from the proposed facility;

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

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

8 (4) Considerations of need, public need, or public
 9 convenience and necessity and demonstration thereof by the
 10 applicant shall apply only to utility facilities.

11 (5) If the duly authorized state air and water quality
 12 agency is required to hold a hearing, the agency shall
 13 within 45 days after submission of the recommended decision
 14 by the hearing examiner, make complete findings, issue an
 15 opinion, and render a decision upon the record, which shall
 16 be certified to the board within 10 days. The agency
 17 decision constitutes the judgment of the agency on all
 18 questions related to the satisfaction of state and federal
 19 air and water quality standards and implementation plans.

20 The final decision of the agency is conclusive on all
 21 matters related to the satisfaction of state and federal air
 22 and water quality standards and the decision shall include
 23 the permits required under the laws administered by the duly
 24 authorized state air and water quality agencies."

25 Section 15. Section 75-20-302, MCA, is amended to

1 read:

2 "75-20-302. Conditions imposed. If the board
 3 determines that the location of all or a part of the
 4 proposed facility should be modified, it may condition its
 5 certificate upon such modification, provided that the
 6 ~~municipalities and persons residing therein in the area~~
 7 affected by the modification have been given reasonable
 8 notice of the modification."

9 Section 16. Section 75-20-304, MCA, is amended to
 10 read:

11 "75-20-304. Waiver of provisions of certification
 12 proceedings. ~~if any of the provisions described in~~
 13 ~~75-20-216 through 75-20-222 and this part may be waived by~~
 14 ~~the board for good cause shown with respect to applications~~
 15 ~~fitted before January 1, 1975. Applications for certificates~~
 16 ~~under this subsection must be promptly fitted.~~

17 ~~121~~ The board may waive compliance with any of the
 18 provisions of 75-20-216 through 75-20-222, ~~75-20-501~~, and
 19 this part if the applicant makes a clear and convincing
 20 showing to the board at a public hearing that an immediate,
 21 urgent need for a facility exists and that the applicant did
 22 not have knowledge that the need for the facility existed
 23 sufficiently in advance to fully comply with the provisions
 24 of 75-20-216 through 75-20-222, ~~75-20-501~~ and this part.

25 ~~121~~ The board may waive compliance with any of the

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

10 Section 17. Section 75-20-401, MCA, is amended to
 11 read:

12 "75-20-401. Additional requirements by other
 13 governmental agencies not permitted after issuance of
 14 certificate -- exceptions. (1) Notwithstanding any other
 15 law, no state or regional agency or municipality or other
 16 local government may require any approval, consent, permit,
 17 certificate, or other condition for the construction,
 18 operation, or maintenance of a facility authorized by a
 19 certificate issued pursuant to this chapter, except that the
 20 state air and water quality agency or agencies shall retain
 21 authority, ~~excluding the authority to conduct hearings and~~
 22 ~~issue permits other than as herein provided~~ which they have
 23 or may be granted to determine compliance of the proposed
 24 facility with state and federal standards and implementation
 25 plans for air and water quality and to enforce those

1 standards.

2 (2) This chapter does not prevent the application of
 3 state laws for the protection of employees engaged in the
 4 construction, operation, or maintenance of a facility."

5 Section 18. Section 75-20-402, MCA, is amended to
 6 read:

7 "75-20-402. Monitoring. The board and the departments
 8 and the state air and water quality agencies shall monitor
 9 the operations of all certificated facilities for assuring
 10 continuing compliance with this chapter and certificates
 11 issued hereunder and for discovering and preventing
 12 noncompliance with this chapter and the certificates. The
 13 applicant shall pay all expenses related to the monitoring
 14 plan established in subsection (3)(a)(v) of 75-20-303 to the
 15 extent federal funds have not been provided for such
 16 purposes."

17 Section 19. Section 75-20-406, MCA, is amended to
 18 read:

19 "75-20-406. Judicial review of board decision. (1) Any
 20 active party as defined in 75-20-221 aggrieved by the final
 21 decision of the board on an application for a certificate
 22 may obtain judicial review of that decision by the filing of
 23 a petition in a state district court of competent
 24 jurisdiction.

25 (2) The judicial review procedure shall be the same as

1 that for contested cases under the Montana Administrative
 2 Procedure Act."

3 Section 20. Section 75-20-408, MCA, is amended to
 4 read:

5 "75-20-408. Penalties for violation of chapter --
 6 civil action by attorney general. (1) (a) Whoever commences
 7 to construct or operate a facility without first obtaining a
 8 certificate required under 75-20-201 or a waiver thereof
 9 under 75-20-304(3); having first obtained a certificate,
 10 constructs, operates, or maintains a facility other than in
 11 compliance with the certificate; violates any other
 12 provision of this chapter or any rule or order adopted
 13 thereunder; knowingly submits false information in any
 14 report, 10-year plan or application required by this chapter
 15 or rule or order adopted thereunder; or causes any of the
 16 aforementioned acts to occur shall be liable to a civil
 17 penalty of not more than \$10,000 for each violation.

18 (b) Each day of a continuing violation shall
 19 constitute a separate offense.

20 (c) The penalty shall be recoverable in a civil suit
 21 brought by the attorney general on behalf of the state in
 22 the first district court of Montana.

23 (2) Whoever knowingly and willfully violates
 24 subsection (1) shall be fined not more than \$10,000 for each
 25 violation or imprisoned for not more than 1 year, or both.

1 Each day of a continuing violation shall constitute a
2 separate offense.

3 (3) In addition to any penalty provided in subsections
4 (1) or (2), whenever the department determines that a person
5 is violating or is about to violate any of the provisions of
6 this section, it may refer the matter to the attorney
7 general who may bring a civil action on behalf of the state
8 in the first district court of Montana for injunctive or
9 other appropriate relief against the violation and to
10 enforce this chapter or a certificate issued hereunder. Upon
11 a proper showing, a permanent or preliminary injunction or
12 temporary restraining order shall be granted without bond.

13 (4) The department shall also enforce this chapter and
14 bring legal actions to accomplish the enforcement through
15 its own legal counsel.

16 (5) All fines and penalties collected shall be
17 deposited in the earmarked revenue fund for the use of the
18 department in administering this chapter.

19 Section 21. Section 75-20-501, MCA, is amended to
20 read:

21 "75-20-501. Annual long-range plan submitted --
22 contents -- available to public. (1) Each utility and each
23 person contemplating the construction of a facility within
24 this state in the ensuing 10 years shall furnish annually to
25 the department for its review a long-range plan for the

1 construction and operation of facilities.

2 (2) The plan shall be submitted on April 1 of each
3 year and shall include the following:

4 (a) the general location, size, and type of all
5 facilities to be owned and operated by the utility or person
6 whose construction is projected to commence during the
7 ensuing 10 years, as well as those facilities to be removed
8 from service during the planning period;

9 (b) in the case of utility facilities, a description
10 of efforts by the utility or person to coordinate the plan
11 with other utilities or persons so as to provide a
12 coordinated regional plan for meeting the energy needs of
13 the region;

14 (c) a description of the efforts to involve
15 environmental protection and land use planning agencies in
16 the planning process, as well as other efforts to identify
17 and minimize environmental problems at the earliest possible
18 stage in the planning process;

19 (d) projections of the demand for the service rendered
20 by the utility or person and explanation of the basis for
21 those projections and a description of the manner and extent
22 to which the proposed facilities will meet the projected
23 demand; and

24 (e) additional information that the board by rule or
25 the department on its own initiative or upon the advice of

1 interested state agencies might request in order to carry
 2 out the purposes of this chapter.

3 (3) The plan shall be made available to the public by
 4 the department. The utility or person shall give public
 5 notice throughout the state of its plan by filing the plan
 6 with the environmental quality council, the department of
 7 health and environmental sciences, the department of
 8 highways, the department of public service regulation, the
 9 department of state lands, and the department of community
 10 affairs. Citizen environmental protection and resource
 11 planning groups and other interested persons may obtain a
 12 plan by written request and payment therefor to the
 13 department.

14 (4) A rural electric cooperative may furnish the
 15 department with a copy of the long-range plan and 2-year
 16 work plan required to be completed under federal rural
 17 electrification requirements in lieu of the long-range plan
 18 required in subsection (3).

19 (5) No person may file an application for a facility
 20 unless the facility had been adequately identified in a
 21 long-range plan at least 2 years prior to acceptance of an
 22 application by the department."

23 Section 22. Section 75-20-503, MCA, is amended to
 24 read:

25 "75-20-503. Environmental factors evaluated. In

1 evaluating long-range plans, conducting 5-year site reviews,
 2 and evaluating applications for certificates, the board and
 3 department shall give consideration to the following list of
 4 environmental factors, where applicable, and may by rule add
 5 to the categories of this section:

6 (1) energy needs:
 7 (a) growth in demand and projections of need;
 8 (b) availability and desirability of alternative
 9 sources of energy;
 10 (c) availability and desirability of alternative
 11 sources of energy in lieu of the proposed facility;
 12 (d) promotional activities of the utility which may
 13 have given rise to the need for this facility;
 14 (e) socially beneficial uses of the output of this
 15 facility, including its uses to protect or enhance
 16 environmental quality;
 17 (f) conservation activities which could reduce the
 18 need for more energy;

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

22 (2) land use impacts:
 23 (a) area of land required and ultimate use;
 24 (b) consistency with areawide state and regional land
 25 use plans;

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

1 industries or other activities to utilize the waste heat
 2 from facilities;
 3 (3) water resources impacts:
 4 (a) hydrologic studies of adequacy of water supply and
 5 impact of facility on streamflow, lakes, and reservoirs;
 6 (b) hydrologic studies of impact of facilities on
 7 groundwater;
 8 (c) cooling system evaluation, including consideration
 9 of alternatives;
 10 (d) inventory of effluents, including physical,
 11 chemical, biological, and radiological characteristics;
 12 (e) hydrologic studies of effects of effluents on
 13 receiving waters, including mixing characteristics of
 14 receiving waters, changed evaporation due to temperature
 15 differentials, and effect of discharge on bottom sediments;
 16 (f) relationship to water quality standards;
 17 (g) effects of changes in quantity and quality on
 18 water use by others, including both withdrawal and in situ
 19 uses;
 20 (h) relationship to projected uses;
 21 (i) relationship to water rights;
 22 (j) effects on plant and animal life, including algae,
 23 macroinvertebrates, and fish population;
 24 (k) effects on unique or otherwise significant
 25 ecosystems, e.g., wetlands;

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1 (1) monitoring programs;
2 (4) air quality impacts:
3 (a) meteorology--wind direction and velocity, ambient
4 temperature ranges, precipitation values, inversion
5 occurrence, other effects on dispersion;
6 (b) topography--factors affecting dispersion;
7 (c) standards in effect and projected for emissions;
8 (d) design capability to meet standards;
9 (e) emissions and controls:
10 (i) stack design;
11 (ii) particulates;
12 (iii) sulfur oxides;
13 (iv) oxides of nitrogen; and
14 (v) heavy metals, trace elements, radioactive
15 materials, and other toxic substances;
16 (f) relationship to present and projected air quality
17 of the area;
18 (g) monitoring program;
19 (5) solid wastes impact impacts:
20 (a) solid waste inventory;
21 (b) disposal program;
22 (c) relationship of disposal practices to
23 environmental quality criteria;
24 (d) capacity of disposal sites to accept projected
25 waste loadings;

1 (6) radiation impacts:
2 (a) land use controls over development and population;
3 (b) wastes and associated disposal program for solid,
4 liquid, radioactive, and gaseous wastes;
5 (c) analyses and studies of the adequacy of
6 engineering safeguards and operating procedures;
7 (d) monitoring--adequacy of devices and sampling
8 techniques;
9 (7) noise impacts:
10 (a) construction period levels;
11 (b) operational levels;
12 (c) relationship of present and projected noise levels
13 to existing and potential stricter noise standards;
14 (d) monitoring--adequacy of devices and methods."
15 Section 23. Section 75-2-211, MCA, is amended to read:
16 "75-2-211. Permits for construction, installations,
17 alteration, or use. (1) The department shall provide for the
18 issuance, suspension, revocation, and renewal of a permit
19 issued under this section.
20 (2) Not later than 180 days before construction begins
21 of any machine, equipment, device, or facility which the
22 board finds may directly or indirectly cause or contribute
23 to air pollution or which is intended primarily to prevent
24 or control the emission of air pollutants and not later than
25 120 days before installation, alteration, or use begins, the

1 owner or operator shall file with the department the
 2 appropriate permit application on forms available from the
 3 department.

4 (3) The department may, for good cause shown, waive
 5 the provisions of subsection (2) or shorten the time
 6 required for filing the appropriate applications.

7 (4) The department shall require that applications for
 8 permits be accompanied by any plans, specifications, and
 9 other information it considers necessary.

10 (5) An application is not considered filed until the
 11 applicant has submitted all information and completed all
 12 application forms required by subsections (2), (3), and (4).
 13 However, if the department fails to notify the applicant in
 14 writing within 30 days after the purported filing of an
 15 application that the application is incomplete and fails to
 16 list the reasons why the application is considered
 17 incomplete, the application is considered filed as of the
 18 date of the purported filing.

19 (6) Where an application for a permit requires the
 20 compilation of an environmental impact statement under the
 21 Montana Environmental Policy Act, the department shall
 22 notify the applicant in writing within 180 days of the
 23 receipt of a filed application, as defined in subsection
 24 (5), of the approval or denial of the application. However,
 25 where an application does not require the compilation of an

1 environmental impact statement, the department shall notify
 2 the applicant in writing within 60 days of the receipt of a
 3 filed application, as defined in subsection (5), of the
 4 approval or denial of the application.

5 (7) When the department approves or denies the
 6 application for a permit under this section, a person who is
 7 jointly or severally adversely affected by the department's
 8 decision may request, within 15 days after the department
 9 renders its decision, upon affidavit setting forth the
 10 grounds therefor, a hearing before the board. A hearing
 11 shall be held under the provisions of the Montana
 12 Administrative Procedure Act.

13 (8) The department's decision on the application is
 14 not final unless 15 days have elapsed and there is no
 15 request for a hearing under this section. The filing of a
 16 request for a hearing postpones the effective date of the
 17 department's decision until the conclusion of the hearing
 18 and issuance of a final decision by the board.

19 191 For a facility defined in 75-20-106a an
 20 application for a permit under this chapter must be filed so
 21 as to insure coordination and compliance with the provisions
 22 of Title 75, chapter 20, and this chapter.*

23 NEW SECTION: Section 24. Order not stayed by appeal
 24 -- stay or suspension by court -- limitations.
 25 Notwithstanding any contrary provision in the law, the

1 pendency of an appeal from a board order does not
2 automatically stay or suspend the operation of the order.
3 During the pendency of the appeal, the court may upon motion
4 by one of the parties stay or suspend, in whole or in part,
5 the operation of the board's orders on terms the court
6 considers just. The court's action must be in accordance
7 with the practice of courts exercising equity jurisdiction,
8 subject to the following limitations:

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

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

16 NEW SECTION Section 25. Surety bond -- other
17 security. If an order of the board is stayed or suspended,
18 the court may require a bond with good and sufficient surety
19 conditioned that the party petitioning for review answer for
20 all damages caused by the delay in enforcing the order of
21 the board. If the party petitioning for review prevails upon
22 final resolution of an appeal, he does not forfeit bond nor
23 is he responsible for damages caused by delay.

24 Section 26. Codification. It is the intent of the
25 legislature that sections 24 and 25 become an integral part

1 of Title 75, chapter 20, MCA, and that the provisions of
2 that chapter apply to sections 24 and 25.
3 Section 27. Repealer. Sections 75-20-1101 through
4 75-20-1105, MCA, are repealed.

-End-

1 STATEMENT OF INTENT RE: HB 883

4 A statement of intent on House Bill 883 is necessary
5 because the Board of Health and Environmental Sciences has
6 been granted rulemaking authority in section 75-20-216 to
7 adopt public participation rules providing the public an
8 opportunity to review and comment on the preliminary
9 decision of the Department of Health on air and water
10 quality. This rulemaking requirement will assure the public
11 an opportunity to review the preliminary air and water
12 quality decision of the Department of Health without having
13 to appeal the Department's decision to the Board of Health
14 and participate in a contested case hearing. This provision
15 is consistent with the public participation provisions of
16 the Montana Constitution and state law. This requirement is
17 being substituted for the requirements under MEPA in order
18 to avoid requiring both the Departments of Health and
19 Natural Resources to prepare an environmental impact
20 statement under MEPA.

21 It is intended that the public participation rule
22 adopted under section 75-20-216 will parallel the review and
23 comment procedures used by the Department of Health to
24 implement the MPDES requirements of the Montana Water
25 Pollution Control Act.

HOUSE BILL NO. 883
INTRODUCED BY BARDANOUVE, SCULLY

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
6 SECTIONS 75-2-222v, 75-20-103, 75-20-104, 75-20-203,
7 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-218, 75-20-220
8 THROUGH 75-20-222v, 75-20-301, 75-20-302, 75-20-304,
9 75-20-401, 75-20-402, 75-20-406, 75-20-408, 75-20-501, AND
10 75-20-503, MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH
11 75-20-1105, MCA."

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

14 Section 1. Section 75-20-103, MCA, is amended to read:
15 "75-20-103. Chapter supersedes other laws or rules.
16 This chapter supersedes other laws or regulations except as
17 provided in 75-20-401. If any provision of this chapter is
18 in conflict with any other law of this state or any rule
19 promulgated thereunder, this chapter shall govern and
20 control and the other law or rule shall be deemed superseded
21 for the purpose of this chapter. Amendments to this chapter
22 shall have the same effect."

23 Section 2. Section 75-20-104, MCA, is amended to read:

24 "75-20-104. Definitions. In this chapter, unless the

25 context requires otherwise the following definitions apply:

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

4 12) "Application" means an application for a
5 certificate submitted in accordance with this chapter and
6 the rules adopted hereunder.

7 f27131 "Associated facilities" includes but is not
8 limited to transportation links of any kind, aqueducts,
9 diversion dams, transmission substations, storage ponds,
10 reservoirs, and any other device or equipment associated
11 with the production or delivery of the energy form or
12 product produced by a facility, except that the term does
13 not include a facility.

14 f37141 "Board" means the board of natural resources
15 and conservation provided for in 2-15-3302.

15) "BOARD OF HEALTH" MEANS THE BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES PROVIDED FOR IN 2-15-2104.

16 t4715161 "Certificate" means the certificate of
17 environmental compatibility and public need issued by the
18 board under this chapter that is required for the
19 construction or operation of a facility.

22 157163/71 "Commence to construct" means:

23 (a) any clearing of land, excavation, construction, or
24 other action that would affect the environment of the site
25 or route of a facility but does not mean changes needed for

1 temporary use of sites or routes for nonutility purposes or
 2 uses in securing geological data, including necessary
 3 borings to ascertain foundation conditions;

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

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

14 (d) the relocation or upgrading of an existing
 15 facility defined by (b) or (c) of subsection ~~171~~ 181, ~~181~~
 16 including upgrading to a design capacity covered by
 17 subsection ~~171~~ 181(b), except that the term does not include
 18 normal maintenance or repair of an existing facility.

19 ~~171~~ 181 "Department" means the department of natural
 20 resources and conservation provided for in Title 2, chapter
 21 15, part 33.

22 ~~191~~ "DEPARTMENT OF HEALTH" MEANS THE DEPARTMENT OF
 23 HEALTH AND ENVIRONMENTAL SCIENCES PROVIDED FOR IN TITLE 2A
 24 CHAPTER 15, PART 21.

25 ~~171~~ 181 "Facility" means:

1 (a) each plant, unit, or other facility and
 2 associated facilities, except for oil and gas refineries,
 3 designed for or capable of:

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

9 (ii) producing 25 million cubic feet ~~or more~~ of gas
 10 ~~derived from coal~~ per day ~~or more~~ or any addition thereto
 11 having an estimated cost in excess of \$250,000;

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

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

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

20 (b) each electric transmission line and associated
 21 facilities of a design capacity of more than 69 kilovolts,
 22 except that the term does not include an electric
 23 transmission line and associated facilities of a design
 24 capacity of 230 kilovolts or less and 10 miles or less in
 25 length;

1 (c) each pipeline and associated facilities designed
 2 for or capable of transporting gas, water, or liquid
 3 hydrocarbon products from or to a facility located within or
 4 without this state of the size indicated in subsection ~~77~~
 5 ~~78~~~~101~~(a) of this section;

6 (d) any use of geothermal resources, including the use
 7 of underground space in existence or to be created, for the
 8 creation, use, or conversion of energy~~s=designed-for-a-~~
~~capable-of-producing-geothermally-derived-power--equivalent~~
~~to--25--million-Btu--per-hour--or--more--or--any--addition--therebe-~~
~~having-an-estimated-cost-in-excess-of-\$250,000--~~

12 (e) any underground in situ gasification of coal.
 13 ~~(f) "Municipality" means any county or municipality~~
 14 ~~within this state.~~

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

19 ~~(h) "Transmission substation" means any structures,
 20 device, or equipment assemblage, commonly located and
 21 designed for voltage regulation, circuit protection, or
 22 switching necessary for the construction or operation of a
 23 proposed transmission line.~~

24 ~~(i) "Utility" means any person engaged in any
 25 aspect of the production, storage, sale, delivery, or~~

1 furnishing of heat, electricity, gas, hydrocarbon products,
 2 or energy in any form for ultimate public use."

3 Section 3. Section 75-20-203, MCA, is amended to read:
 4 "75-20-203. Certificate transferable. A certificate
 5 may be transferred, subject to the approval of the
 6 department board, to a person who agrees to comply with the
 7 terms, conditions, and modifications contained therein."

8 Section 4. Section 75-20-211, MCA, is amended to read:
 9 "75-20-211. Application -- filing and contents --
 10 proof of service and notice. (1) (a) An application for a
 11 certificate shall file with the department a verified an
 12 application in such form as the board by rule or the
 13 department by order prescribes containing the following
 14 information AN APPLICANT SHALL FILE WITH THE DEPARTMENT AND
 15 DEPARTMENT OF HEALTH A JOINT APPLICATION FOR A CERTIFICATE
 16 UNDER THIS CHAPTER AND FOR THE PERMITS REQUIRED BY STATE AIR
 17 AND WATER QUALITY LAWS IN SUCH FORM AS THE BOARD REQUIRES
 18 UNDER APPLICABLE RULES, CONTAINING THE FOLLOWING
 19 INFORMATION:

20 (i) a description of the location and of the facility
 21 to be built thereon;
 22 (ii) a summary of any studies which have been made of
 23 the environmental impact of the facility;
 24 (iii) a statement explaining the need for the facility;
 25 (iv) a description of any reasonable alternate location

1 or locations for the proposed facility; a general
 2 description of the comparative merits and detriments of each
 3 location submitted; and a statement of the reasons why the
 4 primary proposed location is best suited for the facility;
 5 end

6 (VI) BASELINE DATA FOR THE PRIMARY AND REASONABLE
 7 ALTERNATE LOCATIONS;

8 (VII) AT THE APPLICANT'S OPTION, AN ENVIRONMENTAL STUDY
 9 PLAN TO SATISFY THE REQUIREMENTS OF THIS CHAPTER; AND

10 ~~and~~ such other information as the applicant
 11 considers relevant or as the board AND BOARD OF HEALTH by
 12 rule or the department AND DEPARTMENT OF HEALTH by order
 13 requires REQUIRE.

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

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

22 (3) An application shall be accompanied by proof of
 23 service of a copy of the application on the chief--executive
 24 officer--of--each--municipality--and--the--head--of--each--government
 25 agency county commissioners, city or county planning boards,

1 and federal agencies charged with the duty of protecting the
 2 environment or of planning land use in the area in which any
 3 portion of the proposed facility is to be located, both
 4 as primarily and as alternatively proposed, and on the
 5 following state government agencies:

6 (a) environmental quality council;
 7 fbj--department--of--health--and--environmental--sciences;
 8 fet(1) department of public service regulation;
 9 fet(1) department of fish and game;
 10 fet(1) department of state lands;
 11 fet(1) department of community affairs;
 12 fet(1) department of highways;
 13 tht(1) department of revenues;
 14 fit--the--attorney--general;

15 (4) The copy of the application shall be accompanied
 16 by a notice specifying the date on or about which the
 17 application is to be filed.

18 (5) An application shall also be accompanied by proof
 19 that public notice thereof was given to persons residing in
 20 the municipalities--entitled--to--receive--notice--under
 21 subsection (3) of this section--by--the--publication--of--a
 22 summary--of--the--application--and--the--date--on--or--about--which--it
 23 is--to--be--fitted--in--these--newspapers--as--will--serve
 24 substantially--to--inform--these--persons--of--the--application--
 25 area--or--alternative--areas--in--which--any--portion--of--the

1 proposed facility may be located by publication of a
 2 summary of the application in those newspapers that will
 3 substantially inform those persons of the application.

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

8 Section 5. Section 75-20-213, MCA, is amended to read:
 9
 "75-20-213. Amendment-----restrictions SUPPLEMENTAL
 10 MATERIAL -- AMENDMENTS. (1) An application for an amendment
 11 of an application or a certificate shall be in such form and
 12 contain such information as the board by rule or the
 13 department by order prescribes. Notice of such an
 14 application shall be given as set forth in § 75-20-217
 15 of 75-20-214.

16 (2) If an amendment to an original application would
 17 result in a substantial change of the original application
 18 an application for an amendment of an application is
 19 required if the department determines that there is a
 20 substantial change in the location, design or operation of
 21 all or a portion of the facility other than as provided in
 22 the alternatives set forth in the original application such
 23 such an amendment shall be considered as a new application
 24 and a new filing fee shall be required.

25 (3) If the department determines that a proposed

1 change in the location, design or operation of a proposed
 2 facility results from the requirements of other government
 3 agencies and would result in less environmental impact on
 4 application for an amendment is required. However, if the
 5 proposed change is such that it prevents the department from
 6 carrying out its duties and responsibilities under this
 7 chapter, the department shall require a new application and
 8 filing fees. (4) THE APPLICANT MAY, AFTER AN APPLICATION IS
 9 ACCEPTED, SUBMIT SUPPLEMENTAL MATERIAL IN A TIMELY MANNER AS
 10 REQUESTED BY THE DEPARTMENT OR AS DEERED BY THE APPLICANT
 11 TO EXPLAIN, SUPPORT, OR PROVIDE DETAIL WITH RESPECT TO AN
 12 ITEM DESCRIBED IN GENERAL TERMS IN THE ORIGINAL APPLICATION
 13 WITHOUT FILING A FORMAL APPLICATION FOR AN AMENDMENT.

14 (2) (A) THE BOARD MAY APPROVE A CHANGE IN THE
 15 LOCATION, DESIGN, OR OPERATION OF A FACILITY DESCRIBED IN A
 16 CERTIFICATE AFTER IT IS ISSUED IF IT IS DEMONSTRATED BY THE
 17 APPLICANT THAT SUCH CHANGE:

18 (1) RESULTS FROM REQUESTS OF LANDOWNERS UPON WHOSE
 19 PROPERTY THE FACILITY IS OR WOULD BE LOCATED;

20 (2) RESULTS FROM REQUIREMENTS OF OTHER GOVERNMENT
 21 AGENCIES;

22 (3) RESULTS FROM COMPLIANCE WITH A CONDITION IN THE
 23 CERTIFICATE; OR

24 (4) WOULD PROVIDE LESS ENVIRONMENTAL IMPACT.
 25 (5) SUCH CHANGE MAY BE APPROVED BY THE BOARD WITHOUT A

1 FORMAL APPLICATION FOR AN AMENDMENT WHICH APPROVAL MAY BE
 2 GIVEN UPON SUCH TERMS, CONDITIONS, OR MODIFICATIONS AS THE
 3 BOARD CONSIDERS APPROPRIATE. THE BOARD'S APPROVAL SHALL BE
 4 MADE AFTER REASONABLE NOTICE.

5 (3) A CHANGE IN AN APPLICATION AFTER IT IS ACCEPTED,
 6 OR A CHANGE IN A CERTIFICATE AFTER IT IS ISSUED, OTHER THAN
 7 AS SET FORTH IN (1) AND (2) OF 75-20-213 SHALL REQUIRE A
 8 FORMAL APPLICATION FOR AN AMENDMENT, WHICH SHALL BE IN SUCH
 9 FORM AND CONTAIN SUCH INFORMATION AS THE DEPARTMENT BY RULE
 10 OR ORDER PRESCRIBES AND BE ACCOMPANIED BY A FILING FEE BASED
 11 ON THE ESTIMATED COST OF REVIEWING THE APPLICATION FOR AN
 12 AMENDMENT. THE BOARD'S DECISION ON AN APPLICATION FOR AN
 13 AMENDMENT SHALL BE MADE FOLLOWING REASONABLE NOTICE AND
 14 SHALL BE MADE WITHIN 6 MONTHS FOLLOWING RECEIPT OF SUCH
 15 APPLICATION WHICH MAY BE EXTENDED FOR GOOD CAUSE."

16 Section 6. Section 75-20-214, MCA, is amended to read:
 17 "75-20-214. Notice of intent to file. A potential
 18 applicant for a certificate may file a notice of intent to
 19 file an application for a certificate for a facility defined
 20 in 75-20-104~~77~~ 75-20-104~~81~~ at least 12 months prior to the
 21 actual filing of an application. The notice of intent shall
 22 specify the type and size of facility to be applied for, its
 23 preferred location, a description of reasonable alternative
 24 locations, and such information as the board by rule or
 25 department by order requires. An applicant complying with

1 this section is entitled to a 5% reduction of the filing fee
 2 required under 75-20-215."

3 Section 7. Section 75-20-215, MCA, is amended to read:
 4 "75-20-215. Filing fee -- accountability -- refund --
 5 use. (1) ~~(A)~~ A filing fee shall be deposited in the
 6 earmarked revenue fund for the use of the department in
 7 administering this chapter. The applicant shall pay to the
 8 department a filing fee with the application, based upon the
 9 estimated-cost-of-the-facility-according-to-the-declining
 10 scale--which--follows AS PROVIDED IN THIS SECTION BASED UPON
 11 THE DEPARTMENT'S ESTIMATED COSTS OF PROCESSING THE
 12 APPLICATION UNDER THIS CHAPTER, BUT WHICH SHALL NOT EXCEED
 13 THE FOLLOWING SCALE BASED UPON THE ESTIMATED COST OF THE
 14 FACILITY:

15 ~~(a)~~ 2% of any estimated cost up to \$1 million; plus
 16 ~~(b)~~ 1% of any estimated cost over \$1 million and up
 17 to \$20 million; plus

18 ~~(c)~~ 0.5% of any estimated cost over \$20 million
 19 and up to \$100 million; plus

20 ~~(d)~~ 0.25% of any amount of estimated cost over \$100
 21 million and up to \$300 million; plus

22 ~~(e)~~ 0.125% of any amount of estimated cost over \$300
 23 million.

24 ~~(f)~~ A POTENTIAL APPLICANT MAY RECEIVE CREDIT AGAINST
 25 THE FEE PAYABLE UNDER THIS SECTION FOR THE DEVELOPMENT OF

1 INFORMATION OR PROVIDING OF SERVICES REQUIRED HEREUNDER OR
 2 REQUIRED FOR PREPARATION OF AN ENVIRONMENTAL IMPACT
 3 STATEMENT UNDER THE MONTANA OR NATIONAL ENVIRONMENTAL POLICY
 4 ACTS, THE APPLICANT MAY SUBMIT THE INFORMATION TO THE
 5 DEPARTMENT TOGETHER WITH AN ACCOUNTING OF THE EXPENSES
 6 INCURRED IN PREPARING THE INFORMATION; THE DEPARTMENT SHALL
 7 THEN EVALUATE THE APPLICABILITY, VALIDITY, AND USEFULNESS OF
 8 THE DATA AND DETERMINE THE AMOUNT WHICH MAY BE CREDITED
 9 AGAINST THE FILING FEE PAYABLE UNDER THIS SECTION. UPON 30
 10 DAYS' NOTICE TO THE APPLICANT, THIS CREDIT MAY AT ANY TIME
 11 BE REDUCED IF THE DEPARTMENT DETERMINES THAT IT IS NECESSARY
 12 TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS CHAPTER.

13 (2) (a) The total filing fee shall be submitted to the
 14 department upon submittal of an application unless the
 15 applicant and the department have previously agreed to a
 16 schedule of payments whereby a filing fee may be paid in
 17 installments.

18 (b) If the applicant and department agree to the
 19 payment of a filing fee on the installment basis, the
 20 revenue derived from the filing fee must be sufficient to
 21 enable the department, the board, the duty authorized state
 22 air and water quality agencies, the agencies listed in
 23 75-28-216(4) and the attorney general to carry out their
 24 responsibilities under this chapter. THE APPLICANT MAY ENTER
 25 INTO A CONTRACT WITH THE DEPARTMENT FOR THE DEVELOPMENT OF

1 INFORMATION, PROVISION OF SERVICES AND PAYMENT OF FEES AND
 2 COSTS REQUIRED UNDER THIS CHAPTER. THE CONTRACT MAY CONTINUE
 3 AN AGREEMENT ENTERED INTO PURSUANT TO 75-20-106. THE AMOUNT
 4 PAID UNDER ANY CONTRACT SHALL BE CREDITED AGAINST THE FEE
 5 PAYABLE HEREUNDER. NOTWITHSTANDING THE PROVISIONS OF
 6 SUBSECTIONS (2)(B) AND (2)(D), THE REVENUE DERIVED FROM THE
 7 FILING FEE MUST BE SUFFICIENT TO ENABLE THE DEPARTMENT, THE
 8 DEPARTMENT OF HEALTH, THE BOARD, THE BOARD OF HEALTH, AND
 9 THE AGENCIES LISTED IN 75-20-216(4) TO CARRY OUT THEIR
 10 RESPONSIBILITIES UNDER THIS CHAPTER. THE DEPARTMENT WILL
 11 RETAIN THE AUTHORITY TO AMEND A CONTRACT, UPON GOOD CAUSE
 12 SHOWN, TO REQUIRE ADDITIONAL PAYMENTS FOR NECESSARY EXPENSES
 13 UP TO THE LIMITS SET FORTH IN SUBSECTIONS (1)(A) AND (1)(B)
 14 ABOVE UPON 30 DAYS' NOTICE.

15 (c) If an agreement is not entered but
 16 the applicant desires to pay the filing fee in
 17 installments, the applicant may pay the filing fee in
 18 accordance with a schedule of installments developed by the
 19 department, provided that no one installment may exceed 20%
 20 of the total filing fee provided for in subsection (1).

21 (3) The estimated cost of upgrading an existing
 22 transmission substation may not be included in the estimated
 23 cost of a proposed facility for the purpose of calculating a
 24 filing fee.

25 (4) If an application consists of a combination of

1 two or more facilities, the filing fee shall be based on the
 2 total estimated cost of the combined facilities.

3 ~~75-20-2151~~ The applicant is entitled to an accounting of
 4 moneys expended and to a refund with interest at the rate of
 5 6% a year of that portion of the filing fee not expended by
 6 the department in carrying out its responsibilities under
 7 this chapter. A refund shall be made after all
 8 administrative and judicial remedies have been exhausted by
 9 all parties to the certification proceedings.

10 ~~75-20-2161~~ The revenues derived from filing fees shall be
 11 used by the department in compiling the information required
 12 for rendering a decision on a certificate and for carrying
 13 out its ~~and the board's~~ other responsibilities under this
 14 chapter with respect to the facility covered by the
 15 certificate for a period not to exceed 5 years after the
 16 certificate is issued for facilities defined in
 17 75-20-204~~{7};{b}~~ and ~~{c}~~ or not to exceed 10 years after the
 18 certificate is issued for facilities defined in
 19 75-20-204~~{7};{b};{c}~~ and ~~{d}~~ except that a minimum of 28
 20 of the revenues derived shall be allocated to the attorney
 21 general by the department if he becomes an active party to
 22 the certification proceedings."

23 Section 8. Section 75-20-216, MCA, is amended to read:
 24
 25 "75-20-216. Study, evaluation, and report on proposed
 facility -- assistance by other agencies. ~~111~~ After receipt

1 of an application, the department AND DEPARTMENT OF HEALTH
 2 shall within 30 days notify the applicant in writing that:
 3 ~~111~~ if the application is in compliance and is accepted
 4 as complete or
 5 ~~111~~ if the application is not in compliance and list the
 6 deficiencies therein and upon correction of these
 7 deficiencies and resubmission by the applicant, the
 8 department AND DEPARTMENT OF HEALTH shall within 30 days
 9 notify the applicant in writing that the application is in
 10 compliance and is accepted as complete.
 11 ~~111~~ if an application is accepted as complete within
 12 60 days of the original receipt by the department under
 13 subsection ~~75-20-2151~~ the application is effective filing and
 14 receipt date relates back to the original date the
 15 application was filed in all other cases the effective
 16 filing and receipt date is the date on which the department
 17 accepts the application as complete.
 18 ~~75-20-2121~~ Upon receipt of an application complying
 19 with 75-20-211 through 75-20-215, and this section, the
 20 department shall commence an intensive study and evaluation
 21 of the proposed facility and its effects, considering all
 22 the APPLICABLE criteria listed in 75-20-301 and 75-20-503
 23 AND THE DEPARTMENT OF HEALTH SHALL COMMENCE A STUDY TO
 24 ENABLE IT OR THE BOARD OF HEALTH TO ISSUE A DECISION,
 25 OPINION, ORDER, CERTIFICATION, OR PERMIT AS PROVIDED IN

1 SUBSECTION (3). The department AND DEPARTMENT OF HEALTH
 2 shall use, to the extent it--considers THEY CONSIDER
 3 applicable, valid and useful existing studies and reports
 4 submitted by the applicant or compiled by a state or federal
 5 agency.

6 (3) THE DEPARTMENT OF HEALTH SHALL WITHIN 1 YEAR
 7 FOLLOWING THE DATE OF ACCEPTANCE OF AN APPLICATION, AND THE
 8 BOARD OF HEALTH, IF APPLICABLE, WITHIN AN ADDITIONAL 6
 9 MONTHS, SHALL ISSUE ANY DECISION, OPINION, ORDER,
 10 CERTIFICATION, OR PERMIT REQUIRED BY STATE OR FEDERAL AIR
 11 AND WATER QUALITY LAWS AND THIS CHAPTER. THE DEPARTMENT OF
 12 HEALTH AND THE BOARD OF HEALTH SHALL CONSIDER AIR AND WATER
 13 QUALITY IMPACTS AND COMPLIANCE WITH AIR AND WATER QUALITY
 14 STANDARDS AND IMPLEMENTATION PLANS FOR THE PRIMARY AND
 15 REASONABLE ALTERNATE LOCATIONS IN THEIR DECISION, OPINION,
 16 ORDER, CERTIFICATION, OR PERMIT. THE DECISION, OPINION,
 17 ORDER, CERTIFICATION, OR PERMIT, WITH OR WITHOUT CONDITIONS,
 18 IS CONCLUSIVE ON ALL MATTERS OF AIR AND WATER QUALITY
 19 IMPACTS UNDER THE FEDERAL AND STATE AIR AND WATER QUALITY
 20 STATUTES THAT THE DEPARTMENT OF HEALTH AND BOARD OF HEALTH
 21 ADMINISTER, AND FOR THE PURPOSES OF THIS CHAPTER AS
 22 SPECIFIED IN 75-20-503(3) AND (4) WHERE APPLICABLE; THE
 23 DECISION, OPINION, ORDER, CERTIFICATION, OR PERMIT OF THE
 24 DEPARTMENT OF HEALTH OR THE BOARD OF HEALTH SATISFIES THE
 25 REVIEW REQUIREMENTS BY THOSE AGENCIES AND SHALL BE

1 ACCEPTABLE IN LIEU OF AN ENVIRONMENTAL IMPACT STATEMENT
 2 UNDER THE MONTANA ENVIRONMENTAL POLICY ACT. A COPY OF THE
 3 DECISION, OPINION, ORDER, CERTIFICATION, OR PERMIT AND THE
 4 ENVIRONMENTAL IMPACT STATEMENT, IF ANY, BY THE DEPARTMENT OF
 5 HEALTH OR BOARD OF HEALTH SHALL BE SERVED UPON THE
 6 DEPARTMENT AND THE BOARD AND SHALL BE UTILIZED AS PART OF
 7 THEIR FINAL SITE SELECTION PROCESS. A DECISION BY THE
 8 DEPARTMENT OF HEALTH OR BOARD OF HEALTH IS SUBJECT TO
 9 APPELLATE REVIEW PURSUANT TO THE AIR AND WATER QUALITY
 10 STATUTES ADMINISTERED BY THE DEPARTMENT OF HEALTH AND BOARD
 11 OF HEALTH.

12 ~~Within 2--years 18 MONTHS following receipt~~
 13 acceptance of an application for a facility as defined in
 14 (a) and (d) of 75-20-104~~f7~~ 75-20-104~~f8~~ and for a facility
 15 as defined in (b) and (c) of 75-20-104~~f7~~ 75-20-104~~f8~~ which
 16 is more than 30 miles in length and within 1 year for a
 17 facility as defined in (b) and (c) of 75-20-104~~f7~~
 18 75-20-104~~f8~~ which is 30 miles or less in length, the
 19 department shall make a report to the board which shall
 20 contain the department's studies, evaluations,
 21 recommendations, other pertinent documents resulting from
 22 its study and evaluation, and the--finest an environmental
 23 impact statement or analysis prepared pursuant to the
 24 Montana Environmental Policy Act, if any. If the
 25 application is for a combination of two or more facilities,

1 the department shall make its report to the board within the
 2 greater of the lengths of time provided for in this
 3 subsection for either of the facilities.

4 ~~13151~~ The departments of health--and--environmental
 5 resources, highways, community affairs, fish and game, state
 6 lands, revenue, and public service regulation shall report
 7 to the department information relating to the impact of the
 8 proposed site on each department's area of expertise. The
 9 report may include opinions as to the advisability of
 10 granting, denying, or modifying the certificate. The
 11 department shall allocate funds obtained from filing fees to
 12 the departments making reports to reimburse them for the
 13 costs of compiling information and issuing the required
 14 report.*

15 Section 9. Section 75-20-218, MCA, is amended to read:
 16 "75-20-218. Hearing date -- location--department to
 17 act as staff-- hearings to be held jointly. (1) Upon
 18 receipt of the department's report submitted under
 19 75-20-216, the board shall set a date for a hearing to begin
 20 not more than 120 days after the receipt. Except for those
 21 hearings involving applications submitted for facilities as
 22 defined in (b) and (c) of 75-20-104~~17~~ 75-20-104~~18~~,
 23 certification hearings shall be conducted by the board in
 24 the county seat of Lewis and Clark County or the county in
 25 which the facility or the greater portion thereof is to be

1 located.

2 ~~(2) If the department does not participate as an~~
 3 ~~active party in a certification proceeding, it shall act as~~
 4 ~~the staff for the board throughout the decisionmaking~~
 5 ~~process and the board may request the department to present~~
 6 ~~testimony or cross-examine witnesses as the board considers~~
 7 ~~necessary and appropriate.~~

8 ~~(3) At the request of the applicant, the duly~~
 9 ~~authorized state air and water quality agencies shall hold~~
 10 ~~any required permit hearings required under laws~~
 11 ~~administered by those agencies in conjunction with the board~~
 12 ~~certification hearing. In such a conjunctive hearing the~~
 13 ~~time periods established for reviewing an application and~~
 14 ~~for issuing a decision on certification of a proposed~~
 15 ~~facility under this chapter supersede the time periods~~
 16 ~~specified in other laws administered by the duly authorized~~
 17 ~~state air and water quality agencies."~~

18 Section 10. Section 75-20-219, MCA, is amended to
 19 read:

20 "75-20-219--Hearing--on--amendment--of application
 21 certificate; if an application for an amendment--of--a
 22 certificate--the--board--shall--hold--a--hearing--in--the--same
 23 manner as a hearing is held on an application for a
 24 certificate if the board determines that the proposed change
 25 in the facility would result in any material increase in any

1 environmental-impact-of-the-facility-or-a-substantial-change
 2 in--the--location--of-all-or-a-portion-of-the-facility-other
 3 than--as--provided--in--the--alternates--set--forth--in--the
 4 application.

5 if--an--application--for--an--amendment--by--an--applicant
 6 results--from--the--request--of--an--affected--landowner--upon--whose
 7 land--the--facility--is--located--or--from--the--requirements--of
 8 other--government--agencies--and--if--the--amendment--would--not
 9 result--in--any--notable--increase--in--any--environmental--impact
 10 and--if--the--amendment--would--not--result--in--a--substantial
 11 change--in--the--location--of--all--or--a--portion--of--the--facility;
 12 the--board--may--upon--recommendation--by--the--department--grant
 13 an--amendment--to--the--certificate--upon--such--terms--conditions
 14 or--modifications--as--the--board--considers--appropriate--The
 15 board's--decision--shall--be--made--after--30--days--notice--to
 16 affected--parties.

17 if--A--decision--made--by--the--board--pursuant--to
 18 subsections--11--and--12--above--is--subject--to--judicial--review
 19 under--the--Montana--Administrative--Procedure--Act."

20 Section 10. Section 75-20-220, MCA, is amended to
 21 read:

22 "75-20-220. Hearing examiner -- restrictions--
 23 duties. 111 If the board appoints a hearing examiner to
 24 conduct any certification proceedings under this chapter,
 25 the hearing examiner may not be a member of the board or, an

1 employee of the department, or a member or employee of a
 2 duty-authorized-state-air-and-water-quality-agency THE
 3 DEPARTMENT OF HEALTH OR BOARD OF HEALTH. A hearing examiner,
 4 if any, shall be appointed by the board within 20 days after
 5 the department's report has been filed with the board. If a
 6 duty-authorized-state-air-and-water-quality-agency--permit
 7 hearing--is--required CONJUNCTIVE HEARING IS HELD, the board
 8 and the agency BOARD OF HEALTH shall mutually agree on the
 9 appointment of a hearing examiner.

10 121 A prehearing conference shall be held following
 11 notice within 60 days after the department's report has been
 12 filed with the board.

13 131 The prehearing conference shall be organized and
 14 supervised by the hearing examiner.

15 141 The prehearing conference shall be directed toward
 16 a determination of the issues presented by the application,
 17 the department's report, and an identification of the
 18 witnesses and documentary exhibits to be presented by the
 19 active parties who intend to participate in the hearing.

20 151 The hearing examiner shall require the active
 21 parties to submit, in writing, and serve upon the other
 22 active parties, all direct testimony which they propose and
 23 any studies, investigations, reports, or other exhibits that
 24 any active party wishes the board to consider. These written
 25 exhibits and any documents that the board itself wishes to

1 use or rely on shall be submitted and served in like manner
 2 at least 20 days prior to the date set for the hearing. For
 3 good cause shown, the hearing examiner may allow the
 4 introduction of new evidence at any time.

5 (6) THE HEARING EXAMINER SHALL ALLOW DISCOVERY WHICH
 6 SHALL BE COMPLETED BEFORE THE COMMENCEMENT OF THE HEARING,
 7 UPON GOOD CAUSE SHOWN AND UNDER SUCH OTHER CONDITIONS AS THE
 8 HEARING EXAMINER SHALL PRESCRIBE.

9 (6)(7) Public witnesses and other interested public
 10 parties may appear and present oral testimony at the hearing
 11 or submit written testimony to the hearing examiner at the
 12 time of their appearance. These witnesses are subject to
 13 cross-examination.

14 (8) ALL PROCEEDINGS UNDER THIS CHAPTER ARE GOVERNED BY
 15 THE PROCEDURES SET FORTH IN THIS CHAPTER AND BY RULES
 16 ADOPTED BY THE BOARD. NO OTHER RULES OF PROCEDURE OR
 17 EVIDENCE SHALL APPLY EXCEPT THAT THE CONTESTED CASE
 18 PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT SHALL
 19 APPLY IF NOT IN CONFLICT WITH THE PROCEDURES SET FORTH IN
 20 THIS CHAPTER.

21 (8)(9) At the conclusion of the hearing, the hearing
 22 examiner shall declare the hearing closed and shall, within
 23 90-60 days of that date, prepare and submit to the board and
 24 the duly authorized state air and water quality agency, if
 25 necessary, IN THE CASE OF A CONJUNCTIVE HEARING, WITHIN 90
 DAYS TO THE BOARD AND THE BOARD OF HEALTH proposed findings

1 oral testimony by public parties outlining the order in
 2 which the hearing shall proceed and establishing any other
 3 special rules to expedite the hearing which the hearing
 4 examiner may adopt. (9) THE HEARING EXAMINER SHALL ADOPT
 5 RULES DESIGNED TO EXCLUDE REPETITIVE, REDUNDANT, OR
 6 IRRELEVANT TESTIMONY AND SHALL ADOPT OTHER RULES OF EVIDENCE
 7 TO EXPEDITE AND INSURE AN ORDERLY PROCEEDING.

8 (10) THE HEARING EXAMINER SHALL ISSUE A PREHEARING
 9 ORDER SPECIFYING THE ISSUES OF FACT AND OF LAW, IDENTIFYING
 10 THE WITNESSES OF THE ACTIVE PARTIES, NAMING THE PUBLIC
 11 WITNESSES AND OTHER INTERESTED PARTIES WHO HAVE SUBMITTED
 12 WRITTEN TESTIMONY IN LIEU OF APPEARANCE, OUTLINING THE ORDER
 13 IN WHICH THE HEARING SHALL PROCEED, SETTING FORTH THOSE
 14 SECTION 75-20-301 CRITERIA AS TO WHICH NO ISSUE OF FACT OR
 15 LAW HAS BEEN RAISED WHICH ARE TO BE CONCLUSIVELY PRESUMED
 16 AND ARE NOT SUBJECT TO FURTHER PROOF EXCEPT FOR GOOD CAUSE
 17 SHOWN, AND ANY OTHER SPECIAL RULES TO EXPEDITE THE HEARING
 18 WHICH THE HEARING EXAMINER SHALL ADOPT WITH THE APPROVAL OF
 19 THE BOARD.

20 (11) At the conclusion of the hearing, the hearing
 21 examiner shall declare the hearing closed and shall, within
 22 90-60 days of that date, prepare and submit to the board and
 23 the duly authorized state air and water quality agency, if
 24 necessary, IN THE CASE OF A CONJUNCTIVE HEARING, WITHIN 90
 25 DAYS TO THE BOARD AND THE BOARD OF HEALTH proposed findings

1 of facts, conclusions of law, and a recommended decision.
 2 ~~19~~(12) The hearing examiner appointed to conduct a
 3 certification proceeding under this chapter shall insure
 4 that the time of the proceeding, from the date the
 5 department's report is filed with the board until the
 6 recommended report and order of the examiner is filed with
 7 the board, does not exceed ~~12~~ 9 calendar months unless
 8 extended by the board for good cause.

9 ~~113~~ THE BOARD OR HEARING EXAMINER MAY WAIVE ALL OR A
 10 PORTION OF THE PROCEDURES SET FORTH IN SUBSECTIONS 121
 11 THROUGH ~~110~~ OF THIS SECTION TO EXPEDITE THE HEARING FOR
 12 FACILITY DEFINED IN SUBSECTIONS ~~(3)(B)~~ AND ~~(3)(C)~~ OF
 13 75-20-104a"

14 Section 11. Section 75-20-221, MCA, is amended to
 15 read:

16 "75-20-221. Parties to certification proceeding --
 17 waiver--~~attorney--general~~. (1) The parties to a
 18 certification proceeding may include as active parties:

19 (a) the applicant;
 20 (b) each municipality political entity and government
 21 agency entitled to receive service of a copy of the
 22 application under 75-20-211(3);
 23 (c) any person residing in a municipality entitled to
 24 receive service of a copy of the application under
 25 75-20-211(5);

1 (d) any nonprofit organization ~~INTERESTED IN AND~~
 2 ~~AFFECTED BY THE APPLICATION AND WHICH IS~~ formed in whole or
 3 in part to promote conservation or natural beauty; to
 4 protect the environment, personal health, or other
 5 biological values; to preserve historical sites; to promote
 6 consumer interests; to represent commercial and industrial
 7 groups; or to promote the orderly development of the areas
 8 in which the facility is to be located; or
 9 (e) any other interested person ~~who--establishes--an~~
 10 ~~interest--in--the--proceeding AFFECTED BY THE APPLICATION~~; and
 11 ~~if--the--department--and~~
 12 ~~if--the--attorney--general~~
 13 (2) The parties to a certification proceeding may also
 14 include, as public parties, any Montana citizen and any
 15 party referred to in (b), (c), (d), or (e) of subsection
 16 111a
 17 ~~if--the--attorney--general--waives--his--right--to--be--a--party--if--he~~
 18 ~~of--subsection--111--waives--his--right--to--be--a--party--if--he~~
 19 ~~the--party--does--not--participate--orally--at--in--the--hearing~~
 20 ~~before--the--board.~~
 21 ~~if--the--attorney--general--shall--participate--as--an~~
 22 ~~active--party--in--certification--proceedings--involving~~
 23 ~~facilities--described--in--75-20-104f--104f1~~
 24 ~~if--the--attorney--general--shall--be--the--representative~~
 25 ~~of--the--public--interest--on--all--matters--related--in--the--hearings~~

1 ~~related--to--the--criteria--established--in--75-20-301--and~~
 2 ~~75-20-503x~~"

3 Section 12. Section 75-20-222, MCA, is amended to
 4 read:

5 "75-20-222. Record of hearing -- procedure -- rules of
 6 evidence -- burden of proof. (1) Any studies,
 7 investigations, reports, or other documentary evidence,
 8 including those prepared by the department, which any party
 9 wishes the board to consider or which the board itself
 10 expects to utilize or rely upon shall be made a part of the
 11 record.

12 (2) A record shall be made of the hearing and of all
 13 testimony taken.

14 ~~t37--Except-as-expressly-modified-in-75-20-220x The the~~
 15 ~~contested--case--procedures--of--the--Montana-Administrative~~
 16 ~~Procedure-Act--shall--apply--to--the--hearing--except--that~~
 17 ~~neither--common--law--nor--statutory--rules-of-evidence-need~~
 18 ~~apply--The--board--may--make--rules--designed--to--exclude~~
 19 ~~repetitive--redundant--or--irrelevant--testimony~~

20 ~~t47131 In a certification proceeding held under this~~
 21 ~~chapter, the applicant has the burden of showing by clear~~
 22 ~~and convincing evidence that the application should be~~
 23 ~~granted and that the criteria of 75-20-301 are met."~~

24 Section 13. Section 75-20-301, MCA, is amended to
 25 read:

1 "75-20-301. Decision of board -- findings necessary
 2 for certification. (1) Within 90 ~~60~~ days after the ~~last~~ day
 3 of--the--hearing, ~~submission of the recommended decision by~~
 4 ~~the hearing examiner~~, the board shall make complete
 5 findings, issue an opinion, and render a decision upon the
 6 record, either granting or denying the application as filed
 7 or granting it upon such terms, conditions, or modifications
 8 of the construction, operation, or maintenance of the
 9 facility as the board considers appropriate.

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

13 (a) the basis of the need for the facility;
 14 (b) the nature of the probable environmental impact;
 15 (c) that the facility represents the minimum adverse
 16 environmental impact, considering the state of available
 17 technology and the nature and economics of the various
 18 alternatives;

19 (d) each of the criteria listed in 75-20-503;
 20 (e) in the case of an electric, gas, or liquid
 21 transmission line or aqueduct:

22 (i) what part, if any, of the line or aqueduct shall
 23 be located underground;

24 (ii) that the facility is consistent with regional
 25 plans for expansion of the appropriate grid of the utility

1 systems serving the state and interconnected utility
 2 systems; and

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

5 (f) that the location of the facility as proposed
 6 conforms to applicable state and local laws and regulations
 7 issued thereunder, except that the board may refuse to apply
 8 any local law or regulation if it finds that, as applied to
 9 the proposed facility, the law or regulation is unreasonably
 10 restrictive in view of the existing technology, of factors
 11 of cost or economics, or of the needs of consumers, whether
 12 located inside or outside of the directly affected
 13 government subdivisions;

14 (g) that the facility will serve the public interest,
 15 convenience, and necessity; and

16 (h) ~~that-duty-authorized-state-air-and-water--quality~~
 17 ~~agencies--have-certified-that-the-proposed-facility-will-not~~
 18 ~~violate--state--and--federally--established--standards--and~~
 19 ~~implementation--plans--The-judgments-of-duty-authorized-air~~
 20 ~~and-water-quality-agencies-are-conclusive-on--all--questions~~
 21 ~~related--to--the--satisfaction--of--state-and-federal-air-and~~
 22 ~~water-quality-standards. THAT THE DEPARTMENT OF HEALTH OR~~
 23 ~~BOARD OF HEALTH HAVE ISSUED A DECISION, OPINION, ORDER,~~
 24 ~~CERTIFICATION, OR PERMIT AS REQUIRED BY IS-20-216141.~~

25 (3) In determining that the facility will serve the

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

3 (a) the items listed in subsections (2)(a) and (2)(b)
 4 of this section;

5 (b) the benefits to the applicant and the state
 6 resulting from the proposed facility;

7 (c) the effects of the economic activity resulting
 8 from the proposed facility;

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

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

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

15 ~~if-the-duty-authorized-state-air-and-water-quality~~
 16 ~~agency-is-required-to-hold-a-hearing--the-agency-shall~~
 17 ~~within-45-days-after-submission-of-the-recommended-decision~~
 18 ~~by-the-hearing-examiner-make-complete--findings--an~~
 19 ~~opinion--and-render-a-decision-upon-the-records-which-shall~~
 20 ~~be-certified--to--the--board--within-10--days--The--agency~~
 21 ~~decision--constitutes--the--judgment--of--the--agency-on-all~~
 22 ~~questions-related--to--the--satisfaction--of--state--and--federal~~
 23 ~~air--and--water--quality--standards--and--implementation--plans~~
 24 ~~the--final--decision--of--the--agency--is--conclusive--on--all~~
 25 ~~matters-related--to--the--satisfaction--of--state--and--federal--air~~

1 ~~and water quality standards and the decision shall include
2 the permits required under the laws administered by the duly
3 authorized state air and water quality agencies."~~

4 Section 14. Section 75-20-302, MCA, is amended to
5 read:

6 "75-20-302. Conditions imposed. If the board
7 determines that the location of all or a part of the
8 proposed facility should be modified, it may condition its
9 certificate upon such modification, provided that the
10 ~~municipalities and persons residing therein in the areas~~
11 affected by the modification have been given reasonable
12 notice of the modification."

13 Section 15. Section 75-20-304, MCA, is amended to
14 read:

15 "75-20-304. Waiver of provisions of certification
proceedings. ~~if any of the provisions described in
75-20-216 through 75-20-222 and this part may be waived by
the board for good cause shown with respect to applications
fitted before January 1, 1975. Applications for certificates
under this subsection must be promptly fitted.~~

16 ~~The board may waive compliance with any of the
provisions of 75-20-216 through 75-20-222, 75-20-301a and
this part if the applicant makes a clear and convincing
showing to the board at a public hearing that an immediate,
urgent need for a facility exists and that the applicant did~~

1 not have knowledge that the need for the facility existed
2 sufficiently in advance to fully comply with the provisions
3 of 75-20-216 through 75-20-222, 75-20-301a and this part.

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

14 Section 16. Section 75-20-401, MCA, is amended to
15 read:

16 "75-20-401. Additional requirements by other
governmental agencies not permitted after issuance of
certificate -- exceptions. (1) Notwithstanding any other
law, no state or regional agency or municipality or other
local government may require any approval, consent, permit,
certificate, or other condition for the construction,
operation, or maintenance of a facility authorized by a
certificate issued pursuant to this chapter, except that the
state air and water quality agency or agencies shall retain
~~authority -- excluding the authority to conduct hearings and~~

1 ~~issue permits other than as herein provided~~ which they have
 2 or may be granted to determine compliance of the proposed
 3 facility with state and federal standards and implementation
 4 plans for air and water quality and to enforce those
 5 standards.

6 (2) This chapter does not prevent the application of
 7 state laws for the protection of employees engaged in the
 8 construction, operation, or maintenance of a facility."

9 Section 17. Section 75-20-402, MCA, is amended to
 10 read:

11 "75-20-402. Monitoring. The board and the departments
 12 ~~and the state air and water quality agencies~~ ~~THE DEPARTMENT~~
 13 ~~OF HEALTH AND THE BOARD OF HEALTH~~ shall monitor the
 14 operations of all certificated facilities for assuring
 15 continuing compliance with this chapter and certificates
 16 issued hereunder and for discovering and preventing
 17 noncompliance with this chapter and the certificates. The
 18 applicant shall pay all expenses related to the monitoring
 19 plan established in subsection (3)(a)(v) of 75-20-303 to the
 20 extent federal funds have not been provided for such
 21 purposes."

22 Section 18. Section 75-20-406, MCA, is amended to
 23 read:

24 "75-20-406. Judicial review of board decision. (1) Any
 25 active party as defined in 75-20-221 aggrieved by the final

1 decision of the board on an application for a certificate
 2 may obtain judicial review of that decision by the filing of
 3 a petition in a state district court of competent
 4 jurisdiction.

5 (2) The judicial review procedure shall be the same as
 6 that for contested cases under the Montana Administrative
 7 Procedure Act."

8 Section 19. Section 75-20-408, MCA, is amended to
 9 read:

10 "75-20-408. Penalties for violation of chapter --
 11 civil action by attorney general. (1) (a) Whoever commences
 12 to construct or operate a facility without first obtaining a
 13 certificate required under 75-20-201 or a waiver thereof
 14 under 75-20-304(3); having first obtained a certificate,
 15 constructs, operates, or maintains a facility other than in
 16 compliance with the certificate; violates any other
 17 provision of this chapter or any rule or order adopted
 18 thereunder; knowingly submits false information in any
 19 report, 10-year plan or application required by this chapter
 20 or rule or order adopted thereunder; or causes any of the
 21 aforementioned acts to occur shall be liable to a civil
 22 penalty of not more than \$10,000 for each violation.

23 (b) Each day of a continuing violation shall
 24 constitute a separate offense.

25 (c) The penalty shall be recoverable in a civil suit

1 brought by the attorney general on behalf of the state in
2 the first district court of Montana.

3 (2) Whoever knowingly and willfully violates
4 subsection (1) shall be fined not more than \$10,000 for each
5 violation or imprisoned for not more than 1 year, or both.
6 Each day of a continuing violation shall constitute a
7 separate offense.

8 (3) In addition to any penalty provided in subsections
9 (1) or (2), whenever the department determines that a person
10 is violating or is about to violate any of the provisions of
11 this section, it may refer the matter to the attorney
12 general who may bring a civil action on behalf of the state
13 in the first district court of Montana for injunctive or
14 other appropriate relief against the violation and to
15 enforce this chapter or a certificate issued hereunder. Upon
16 a proper showing, a permanent or preliminary injunction or
17 temporary restraining order shall be granted without bond.

18 (4) The department shall also enforce this chapter and
19 bring legal actions to accomplish the enforcement through
20 its own legal counsel.

21 (5) All fines and penalties collected shall be
22 deposited in the earmarked revenue fund for the use of the
23 department in administering this chapter."

24 Section 20. Section 75-20-501, MCA, is amended to
25 read:

1 "75-20-501. Annual long-range plan submitted --
2 contents -- available to public. (1) Each utility and each
3 person contemplating the construction of a facility within
4 this state in the ensuing 10 years shall furnish annually to
5 the department for its review a long-range plan for the
6 construction and operation of facilities.

7 (2) The plan shall be submitted on April 1 of each
8 year and shall include the following:

9 (a) the general location, size, and type of all
10 facilities to be owned and operated by the utility or person
11 whose construction is projected to commence during the
12 ensuing 10 years, as well as those facilities to be removed
13 from service during the planning period;

14 (b) in the case of utility facilities, a description
15 of efforts by the utility or person to coordinate the plan
16 with other utilities or persons so as to provide a
17 coordinated regional plan for meeting the energy needs of
18 the region;

19 (c) a description of the efforts to involve
20 environmental protection and land use planning agencies in
21 the planning process, as well as other efforts to identify
22 and minimize environmental problems at the earliest possible
23 stage in the planning process;

24 (d) projections of the demand for the service rendered
25 by the utility or person and explanation of the basis for

1 those projections and a description of the manner and extent
 2 to which the proposed facilities will meet the projected
 3 demand; and

4 (e) additional information that the board by rule or
 5 the department on its own initiative or upon the advice of
 6 interested state agencies might request in order to carry
 7 out the purposes of this chapter.

8 (3) The plan shall be made available to the public by
 9 the department. The utility or person shall give public
 10 notice throughout the state of its plan by filing the plan
 11 with the environmental quality council, the department of
 12 health and environmental sciences, the department of
 13 highways, the department of public service regulation, the
 14 department of state lands, and the department of community
 15 affairs. Citizen environmental protection and resource
 16 planning groups and other interested persons may obtain a
 17 plan by written request and payment therefor to the
 18 department.

19 (4) A rural electric cooperative may furnish the
 20 department with a copy of the long-range plan and 2-year
 21 work plan required to be completed under federal rural
 22 electrification requirements in lieu of the long-range plan
 23 required in subsection (1).

24 (5) No person may file an application for a facility
 25 unless the facility had been adequately identified in a

1 long-range plan at least 2 years prior to acceptance of an
 2 application by the department."

3 Section 21. Section 75-20-503, MCA, is amended to
 4 read:

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

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

1 environmental impact;

2 (2) land use impacts:

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

4 (b) consistency with areawide state and regional land

5 use plan;

6 (c) consistency with existing and projected nearby

7 land use;

8 (d) alternative uses of the site;

9 (e) impact on population already in the area, population attracted by construction or operation of the

10 facility itself;

11 (f) impact of availability of energy from this facility on growth patterns and population dispersal;

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

13 (h) seismologic characteristics;

14 (i) construction practices;

15 (j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the

16 facility;

17 (k) corridor design and construction precautions for transmission lines or aqueducts;

18 (l) scenic impacts;

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

20 (n) impacts on important historic architectural, archeological, and cultural areas and features;

1 (o) extent of recreation opportunities and related

2 compatible uses;

3 (p) public recreation plan for the project;

4 (q) public facilities and accommodation;

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

6 industries or other activities to utilize the waste heat

7 from facilities;

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 evaluation, including consideration

14 of alternatives;

15 (d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

16 (e) hydrologic studies of effects of effluents on

17 receiving waters, including mixing characteristics of

18 receiving waters, changed evaporation due to temperature

19 differentials, and effect of discharge on bottom sediments;

20 (f) relationship to water quality standards;

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

22 water use by others, including both withdrawal and in situ

23 uses;

24 (h) relationship to projected uses;

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 (4) 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 (5) solid wastes impact impacts:
 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 (6) radiation impacts:
 7 (a) land use controls over development and population;
 8 (b) wastes and associated disposal program for solid,
 9 liquids, 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 (7) 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."
 20 Section-23--Section-75-2-211y-MEA-is-amended-to-reads
 21 "75-2-211y--Permits--for--construction---installations
 22 alteration--or--use---(1)--The-department-shall-provide-for
 23 the--issuance--suspension--revocation--and--renewal--of--a
 24 permit-issued-under-this-section
 25 (2)--Not-later-than-100-days-before-construction-begins

1 of--any--machines--equipment--devices--or--facilities--which--the
 2 board--finds--may--directly--or--indirectly--cause--or--contribute
 3 to--air--pollution--or--which--is--intended--primarily--to--prevent
 4 or--control--the--emission--of--air--pollutants--and--not--later--than
 5 120--days--before--installation--alteration--or--use--begins--the
 6 owner--or--operator--shall--file--with--the--department--the
 7 appropriate--permit--application--on--forms--available--from--the
 8 department.

9 {3}--The--department--may--for--good--cause--showly--waive
 10 the--provisions--of--subsection--{2}--or--shorten--the--time
 11 required--for--filing--the--appropriate--applications.

12 {4}--The--department--shall--require--that--applications--for
 13 permits--be--accompanied--by--any--plans--specifications--and
 14 other--information--it--considers--necessary.

15 {5}--An--application--is--not--considered--fitted--until--the
 16 applicant--has--submitted--all--information--and--completed--all
 17 application--forms--required--by--subsections--{2}--{3}--and--{4}--
 18 However--if--the--department--fails--to--notify--the--applicant--in
 19 writing--within--30--days--after--the--purported--fitting--of--an
 20 application--that--the--application--is--incomplete--and--fails--to
 21 list--the--reasons--why--the--application--is--considered
 22 incomplete--the--application--is--considered--fitted--as--of--the
 23 date--of--the--purported--fitting.

24 {6}--Where--an--application--for--a--permit--requires--the
 25 completion--of--an--environmental--impact--statement--under--the

1 Montana--Environmental--Policy--Act--the--department--shall
 2 notify--the--applicant--in--writing--within--100--days--of--the
 3 receipt--of--a--fitted--application--as--defined--in--subsection
 4 {5}--of--the--approval--or--denial--of--the--application--However,
 5 where--an--application--does--not--require--the--completion--of--an
 6 environmental--impact--statement--the--department--shall--notify
 7 the--applicant--in--writing--within--60--days--of--the--receipt--of--a
 8 fitted--application--as--defined--in--subsection--{5}--of--the
 9 approval--or--denial--of--the--application.

10 {7}--When--the--department--approves--or--denies--the
 11 application--for--a--permit--under--this--section--a--person--who--is
 12 jointly--or--severely--adversely--affected--by--the--department's
 13 decision--may--request--within--15--days--after--the--department
 14 renders--its--decision--upon--affidavit--setting--forth--the
 15 grounds--therefore--a--hearing--before--the--boards--A--hearing
 16 shall--be--held--under--the--provisions--of--the--Montana
 17 Administrative--Procedure--Act.

18 {8}--The--department's--decision--on--the--application--is
 19 not--final--unless--15--days--have--elapsed--and--there--is--no
 20 request--for--a--hearing--under--this--section--The--fitting--of--a
 21 request--for--a--hearing--postpones--the--effective--date--of--the
 22 department's--decision--until--the--conclusion--of--the--hearing
 23 and--issuance--of--a--final--decision--by--the--boards.

24 {9}--For--a--facility--defined--in--{5}--{8}--an
 25 application--for--a--permit--under--this--chapter--must--be--fitted--as

1 ~~as-to-insure-coordination-and-compliance-with-the-provisions~~
 2 ~~of-title-75-chapter-20-and-this-chapter."~~

3 NEW SECTION. Section 22. Order not stayed by appeal
 4 -- stay or suspension by court -- limitations.
 5 Notwithstanding any contrary provision in the law, the
 6 pendency of an appeal from a board order does not
 7 automatically stay or suspend the operation of the order.
 8 During the pendency of the appeal, the court may upon motion
 9 by one of the parties stay or suspend, in whole or in part,
 10 the operation of the board's orders on terms the court
 11 considers just. The court's action must be in accordance
 12 with the practice of courts exercising equity jurisdiction,
 13 subject to the following limitations:

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

16 (2) No board order may be stayed or suspended without
 17 finding that irreparable damage would otherwise result to
 18 the party seeking the stay or suspension, and any other stay
 19 or suspension of a board order must specify the nature of
 20 the damage.

21 NEW SECTION. Section 23. Surety bond -- other
 22 security. If an order of the board is stayed or suspended,
 23 the court may ~~also~~ require a bond with good and sufficient
 24 surety conditioned that the party petitioning for review
 25 answer for all damages caused by the delay in enforcing the

1 order of the board; ~~EXCEPT THAT THE COST OF THE BOND IS NOT~~
 2 ~~CHARGEABLE TO THE APPLICANT AS PART OF THE FEE.~~ If the party
 3 petitioning for review prevails upon final resolution of an
 4 appeal, he does not forfeit bond nor is he responsible for
 5 damages caused by delay.

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

10 Section 25. Repeater. Sections 75-20-1101 through
 11 75-20-1105, MCA, are repealed.

-End-

HOUSE BILL NO. 883

INTRODUCED BY BARDANOUVE, SCULLY

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
6 SECTIONS 75-2-214, 75-20-103, 75-20-104, 75-20-203,
7 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-218, ~~75-20-220~~
8 75-20-217 THROUGH 75-20-222, 75-20-301, 75-20-302,
9 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-408,
10 75-20-501, AND 75-20-503, MCA; AND REPEALING SECTIONS
11 75-20-1101 THROUGH 75-20-1105, MCA."

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

14 Section 1. Section 75-20-103, MCA, is amended to read:
15 "75-20-103. Chapter supersedes other laws or rules.
16 This chapter supersedes other laws or regulations except as
17 provided in 75-20-401. If any provision of this chapter is
18 in conflict with any other law of this state or any rule
19 promulgated thereunder, this chapter shall govern and
20 control and the other law or rule shall be deemed superseded
21 for the purpose of this chapter. Amendments to this chapter
22 shall have the same effects."

23 Section 2. Section 75-20-104, MCA, is amended to read:
24 *75-20-104. Definitions. In this chapter, unless the
25 context requires otherwise the following definitions apply:

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

4 {2} "Application" means an application for a
5 certificate submitted in accordance with this chapter and
6 the rules adopted hereunder.

7 t27{31 "Associated facilities" includes but is not
8 limited to transportation links of any kind, aqueducts,
9 diversion dams, transmission substations, storage ponds,
10 reservoirs, and any other device or equipment associated
11 with the production or delivery of the energy form or
12 product produced by a facility, except that the term does
13 not include a facility.

14 437(4) "Board" means the board of natural resources
15 and conservation provided for in 2-15-3302.

16 15) "BOARD OF HEALTH" MEANS THE BOARD OF HEALTH AND
17 ENVIRONMENTAL SCIENCES PROVIDED FOR IN 2-15-2104.

18 ~~t47151(6)~~ "Certificate" means the certificate of
19 environmental compatibility and public need issued by the
20 board under this chapter that is required for the
21 construction or operation of a facility.

22 **t5t6t71** "Commence to construct" means:
23 (a) any clearing of land, excavation, construction, or
24 other action that would affect the environment of the site
25 or route of a facility but does not mean changes needed for

1 temporary use of sites or routes for nonutility purposes or
 2 uses in securing geological data, including necessary
 3 borings to ascertain foundation conditions;

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

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

14 (d) the relocation or upgrading of an existing
 15 facility defined by (b) or (c) of subsection ~~177~~ 181,
 16 including upgrading to a design capacity covered by
 17 subsection ~~177~~ 181(b), except that the term does not include
 18 normal maintenance or repair of an existing facility.

19 ~~167~~¹⁷⁷~~181~~ "Department" means the department of natural
 20 resources and conservation provided for in Title 2, chapter
 21 15, part 33.

22 (9) "DEPARTMENT OF HEALTH" MEANS THE DEPARTMENT OF
23 HEALTH AND ENVIRONMENTAL SCIENCES PROVIDED FOR IN TITLE 2,
24 CHAPTER 15, PART 21.

25 ~~177~~¹⁸¹~~110~~ "Facility" means:

1 (a) each plant, unit, or other facility and
 2 associated facilities, except for oil and gas refineries,
 3 designed for or capable of:

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

9 (ii) producing 25 million cubic feet ~~or more~~ of gas
 10 ~~derived from coal~~ per day ~~or more~~ or any addition thereto
 11 having an estimated cost in excess of \$250,000;

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

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

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

20 (b) each electric transmission line and associated
 21 facilities of a design capacity of more than 69 kilovolts,
 22 except that the term does not include an electric
 23 transmission line and associated facilities of a design
 24 capacity of 230 kilovolts or less and 10 miles or less in
 25 length;

1 (c) each pipeline and associated facilities designed
 2 for or capable of transporting gas, water, or liquid
 3 hydrocarbon products from or to a facility located within or
 4 without this state of the size indicated in subsection ~~777~~
 5 ~~777(1)(a)~~ of this section;

6 (d) any use of geothermal resources, including the use
 7 of underground space in existence or to be created, for the
 8 creation, use, or conversion of energy ~~designed for or~~
~~capable of producing geothermally derived power equivalent~~
~~to 25 million Btu per hour or more or any addition thereto~~
~~having an estimated cost in excess of \$250,000.~~

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

13 ~~(8) "Municipality" means any county or municipality
 14 within this state.~~

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

19 ~~(10) "Transmission substation" means any structure,
 20 device, or equipment assemblage commonly located and
 21 designed for voltage regulation, circuit protection, or
 22 switching necessary for the construction or operation of a
 23 proposed transmission line.~~

24 ~~(11) "Utility" means any person engaged in any
 25 aspect of the production, storage, sale, delivery, or~~

1 furnishing of heat, electricity, gas, hydrocarbon products,
 2 or energy in any form for ultimate public use."

3 Section 3. Section 75-20-203, MCA, is amended to read:
 4 "75-20-203. Certificate transferable. A certificate
 5 may be transferred, subject to the approval of the
 6 department ~~board~~, to a person who agrees to comply with the
 7 terms, conditions, and modifications contained therein."

8 Section 4. Section 75-20-211, MCA, is amended to read:

9 "75-20-211. Application -- filing and contents --
 10 proof of service and notice. (1) (a) ~~An applicant for a~~
~~certificate shall file with the department a verified~~
~~application in such form as the board by rule or the~~
~~department by order prescribes, containing the following~~
~~information~~ ~~AN APPLICANT SHALL FILE WITH THE DEPARTMENT AND~~
~~DEPARTMENT OF HEALTH A JOINT APPLICATION FOR A CERTIFICATE~~
~~UNDER THIS CHAPTER AND FOR THE PERMITS REQUIRED BY STATE AIR~~
~~AND WATER QUALITY LAWS IN SUCH FORM AS THE BOARD REQUIRES~~
~~UNDER APPLICABLE RULES, CONTAINING THE FOLLOWING~~
~~INFORMATION:~~

20 (i) a description of the location and of the facility
 21 to be built thereon;
 22 (ii) a summary of any studies which have been made of
 23 the environmental impact of the facility;
 24 (iii) a statement explaining the need for the facility;
 25 (iv) a description of any reasonable alternate location

1 or locations for the proposed facility, a general
 2 description of the comparative merits and detriments of each
 3 location submitted, and a statement of the reasons why the
 4 primary proposed location is best suited for the facility;
 5 end

6 (IV) BASELINE DATA FOR THE PRIMARY AND REASONABLE
 7 ALTERNATE LOCATIONS;

8 (V) AT THE APPLICANT'S OPTION, AN ENVIRONMENTAL STUDY
 9 PLAN TO SATISFY THE REQUIREMENTS OF THIS CHAPTER; AND
 10 tvt(VIII) such other information as the applicant
 11 considers relevant or as the board AND BOARD OF HEALTH by
 12 rule or the department AND DEPARTMENT OF HEALTH by order
 13 requires REQUIRE.

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

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

22 (3) An application shall be accompanied by proof of
 23 service of a copy of the application on the ~~chfe--executive~~
 24 ~~officer--of--each--municipality--and--the--head--of--each--government~~
 25 ~~agency county commissioner, city or county planning board~~s

1 and federal agencies charged with the duty of protecting the
 2 environment or of planning land use in the area in which any
 3 portion of the proposed facility ~~is--to--may~~ be located, both
 4 as primarily and as alternatively proposed and on the
 5 following state government agencies:

6 (a) environmental quality council;
 7 ~~the--department--of--health--and--environmental--science~~
 8 (b) department of public service regulation;
 9 ~~the--council~~
 10 (c) department of fish and game;
 11 ~~the--department--of--state--lands~~
 12 (d) department of community affairs;
 13 ~~the--department--of--highways~~
 14 (e) department of revenues;
 15 ~~the--attorney--general~~

16 (4) The copy of the application shall be accompanied
 17 by a notice specifying the date on or about which the
 18 application is to be filed.

19 (5) An application shall also be accompanied by proof
 20 that public notice thereof was given to persons residing in
 21 the ~~municipalities--entitled--to--receive--notice--under~~
 22 ~~subsection--tvt--of--this--section--by--the--publication--of--a~~
 23 ~~summary--of--the--application--and--the--date--on--or--about--which--it~~
 24 ~~is--to--be--fited--in--those--newspapers--as--will--serve~~
 25 ~~substantially--to--inform--those--persons--of--the--applications~~
~~area--or--alternative--areas--in--which--any--portion--of--the~~

1 proposed facility may be located, by publication of a
 2 summary of the application in those newspapers that will
 3 substantially inform those persons of the application.

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

8 Section 5. Section 75-20-213, MCA, is amended to read:
 9 ~~*75-20-213. Amendment-----restrictions~~ **SUPPLEMENTAL**
 10 **MATERIAL -- AMENDMENTS.** ~~tat~~ An application for an amendment
 11 of an application or a certificate shall be in such form and
 12 contain such information as the board by rule or the
 13 department by order prescribes. Notice of such an
 14 application shall be given as set forth in ~~(3), (4), and (5)~~
 15 of 75-20-213.

16 ~~(2) If an amendment to an original application would~~
 17 ~~result in a substantial change of the original application~~
 18 ~~an application for an amendment of an application is~~
 19 ~~required if the department determines that there is a~~
 20 ~~substantial change in the location, design, or operation of~~
 21 ~~all or a portion of the facility other than as provided in~~
 22 ~~the alternates set forth in the original application such~~
 23 ~~such an amendment shall be considered as a new application~~
 24 ~~and a new filing fee shall be required.~~

25 ~~tat~~ If the department determines that a proposed

1 ~~change in the location, design, or operation of a proposed~~
 2 ~~facility results from the requirements of other government~~
 3 ~~agencies and would result in less environmental impact an~~
 4 ~~application for an amendment is required. However, if the~~
 5 ~~proposed change is such that it prevents the department from~~
 6 ~~carrying out its duties and responsibilities under this~~
 7 ~~chapter, the department shall require a new application and~~
 8 ~~filling fees~~ ~~tat~~ THE APPLICANT MAY AFTER AN APPLICATION IS
 9 ~~ACCEPTED~~ ~~SHALL~~ ~~SUMMIT~~ ~~SUPPLEMENTAL MATERIAL IN A TIMELY MANNER AS~~
 10 ~~REQUESTED BY THE DEPARTMENT OR AS OFFERED BY THE APPLICANT~~
 11 ~~TO EXPLAIN SUPPORT OR PROVIDE DETAIL WITH RESPECT TO AN~~
 12 ~~ITEM DESCRIBED IN GENERAL TERMS IN THE ORIGINAL APPLICATION~~
 13 ~~WITHOUT FILING A FORMAL APPLICATION FOR AN AMENDMENT~~
 14 ~~tat~~ ~~tat~~ THE BOARD MAY APPROVE A CHANGE IN THE
 15 ~~LOCATION, DESIGN, OR OPERATION OF A FACILITY DESCRIBED IN A~~
 16 ~~CERTIFICATE AFTER IT IS ISSUED IF IT IS DEMONSTRATED BY THE~~
 17 ~~APPLICANT THAT SUCH CHANGE~~
 18 ~~tat~~ ~~RESULTS FROM REQUESTS OF LANDOWNERS UPON WHOSE~~
 19 ~~PROPERTY THE FACILITY IS OR WOULD BE LOCATED~~
 20 ~~tat~~ ~~RESULTS FROM REQUIREMENTS OF OTHER GOVERNMENT~~
 21 ~~AGENCIES~~
 22 ~~tat~~ ~~RESULTS FROM COMPLIANCE WITH A CONDITION IN THE~~
 23 ~~CERTIFICATE OR~~
 24 ~~tat~~ ~~WOULD PROVIDE LESS ENVIRONMENTAL IMPACT~~
 25 ~~tat~~ ~~SUCH CHANGE MAY BE APPROVED BY THE BOARD WITHOUT A~~

1 FORMAL APPLICATION FOR AN AMENDMENT WHICH APPROVAL MAY BE
 2 GIVEN UPON SUCH TERMS, CONDITIONS, OR MODIFICATIONS AS THE
 3 BOARD CONSIDERS APPROPRIATE. THE BOARD'S APPROVAL SHALL BE
 4 MADE AFTER REASONABLE NOTICE.

5 (1) A CHANGE IN AN APPLICATION AFTER IT IS ACCEPTED
 6 OR A CHANGE IN A CERTIFICATE AFTER IT IS ISSUED, OTHER THAN
 7 AS SET FORTH IN (3) AND (4) OF 75-20-213 SHALL REQUIRE A
 8 FORMAL APPLICATION FOR AN AMENDMENT WHICH SHALL BE IN SUCH
 9 FORM AND CONTAIN SUCH INFORMATION AS THE DEPARTMENT BY RULE
 10 OR ORDER PREScribes AND BE ACCOMPANIED BY A FILING FEE BASED
 11 ON THE ESTIMATED COST OF REVIEWING THE APPLICATION FOR AN
 12 AMENDMENT. THE BOARD'S DECISION ON AN APPLICATION FOR AN
 13 AMENDMENT SHALL BE MADE FOLLOWING REASONABLE NOTICE AND
 14 SHALL BE MADE WITHIN 6 MONTHS FOLLOWING RECEIPT OF SUCH
 15 APPLICATION WHICH MAY BE EXTENDED FOR GOOD CAUSE. (1) AN
 16 APPLICATION FOR AN AMENDMENT OR AN APPLICATION FOR 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) AN APPLICATION MAY BE AMENDED BY AN APPLICANT ANY
 22 TIME PRIOR TO THE DEPARTMENT'S RECOMMENDATION. IF THE
 23 PROPOSED AMENDMENT IS SUCH THAT IT PREVENTS THE DEPARTMENT,
 24 THE DEPARTMENT OF HEALTH, OR THE AGENCIES LISTED IN
 25 75-20-216(5) FROM CARRYING OUT THEIR DUTIES AND

1 RESPONSIBILITIES UNDER THIS CHAPTER, THE DEPARTMENT MAY
 2 REQUIRE SUCH ADDITIONAL FILING FEES AS THE DEPARTMENT
 3 DETERMINES NECESSARY, OR THE DEPARTMENT MAY REQUIRE A NEW
 4 APPLICATION AND FILING FEE.

5 (3) THE APPLICANT SHALL SUBMIT SUPPLEMENTAL MATERIAL
 6 IN A TIMELY MANNER AS REQUESTED BY THE DEPARTMENT OR AS
 7 OFFERED BY THE APPLICANT TO EXPLAIN, SUPPORT, OR PROVIDE THE
 8 DETAIL WITH RESPECT TO AN ITEM DESCRIBED IN THE ORIGINAL
 9 APPLICATION, WITHOUT FILING AN APPLICATION FOR AN AMENDMENT.
 10 THE DEPARTMENT'S DETERMINATION AS TO WHETHER INFORMATION IS
 11 SUPPLEMENTAL OR WHETHER AN APPLICATION FOR AMENDMENT IS
 12 REQUIRED SHALL BE CONCLUSIVE."

13 Section 6. Section 75-20-214, MCA, is amended to read:
 14 "75-20-214. Notice of intent to file. A potential
 15 applicant for a certificate may file a notice of intent to
 16 file an application for a certificate for a facility defined
 17 in 75-20-104(7), 75-20-104(8), 75-20-104(10) at least 12
 18 months prior to the actual filing of an application. The
 19 notice of intent shall specify the type and size of facility
 20 to be applied for, its preferred location, a description of
 21 reasonable alternative locations, and such information as
 22 the board by rule or department by order requires. An
 23 applicant complying with this section is entitled to a 5%
 24 reduction of the filing fee required under 75-20-215."

25 Section 7. Section 75-20-215, MCA, is amended to read:

1 "75-20-215. Filing fee -- accountability -- refund --
 2 use. (1) (A) A filing fee shall be deposited in the
 3 earmarked revenue fund for the use of the department in
 4 administering this chapter. The applicant shall pay to the
 5 department a filing fee with-the-application based-upon-the
 6 estimated--cost--of--the-facility-according-to-the-declining
 7 scale-which-follows AS PROVIDED IN THIS SECTION BASED UPON
 8 THE DEPARTMENT'S ESTIMATED COSTS OF PROCESSING THE
 9 APPLICATION UNDER THIS CHAPTER, BUT WHICH SHALL NOT EXCEED
 10 THE FOLLOWING SCALE BASED UPON THE ESTIMATED COST OF THE
 11 FACILITY:

12 ~~total~~ 2% of any estimated cost up to \$1 million; plus
 13 ~~total~~ 1% of any estimated cost over \$1 million and up
 14 to \$20 million; plus

15 ~~total~~ 0.5% of any estimated cost over \$20 million
 16 and up to \$100 million; plus

17 ~~total~~ 0.25% of any amount of estimated cost over \$100
 18 million and up to \$300 million; plus

19 ~~total~~ .125% of any amount of estimated cost over \$300
 20 million.

21 ~~(B) A--POTENTIAL--APPLICANT--MAY--RECEIVE THE DEPARTMENT~~
 22 ~~MAY ALLOW IN ITS DISCRETION A CREDIT AGAINST THE FEE PAYABLE~~
 23 ~~UNDER THIS SECTION FOR THE DEVELOPMENT OF INFORMATION OR~~
 24 ~~PROVIDING OF SERVICES REQUIRED HEREUNDER OR REQUIRED FOR~~
 25 ~~PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT UNDER THE~~

1 MONTANA OR NATIONAL ENVIRONMENTAL POLICY ACTS, THE APPLICANT
 2 MAY SUBMIT THE INFORMATION TO THE DEPARTMENT TOGETHER WITH
 3 AN ACCOUNTING OF THE EXPENSES INCURRED IN PREPARING THE
 4 INFORMATION; THE DEPARTMENT SHALL THEN EVALUATE THE
 5 APPLICABILITY, VALIDITY, AND USEFULNESS OF THE DATA AND
 6 DETERMINE THE AMOUNT WHICH MAY BE CREDITED AGAINST THE
 7 FILING FEE PAYABLE UNDER THIS SECTION. UPON 30 DAYS' NOTICE
 8 TO THE APPLICANT, THIS CREDIT MAY AT ANY TIME BE REDUCED IF
 9 THE DEPARTMENT DETERMINES THAT IT IS NECESSARY TO CARRY OUT
 10 ITS RESPONSIBILITIES UNDER THIS CHAPTER.

11 ~~(2) (a) The total filing fee shall be submitted to the~~
 12 ~~department upon submission of an application unless the~~
 13 ~~applicant and the department have previously agreed to a~~
 14 ~~schedule of payments whereby a filing fee may be paid in~~
 15 ~~installments.~~

16 ~~the if the applicant and department agree to the~~
 17 ~~payment of a filing fee on the installment basis, the~~
 18 ~~revenue derived from the filing fee must be sufficient to~~
 19 ~~enable the department, the board, the duly authorized state~~
 20 ~~air and water quality agencies, the agencies listed in~~
 21 ~~75-20-214, and the attorney general to carry out their~~
 22 ~~responsibilities under this chapter. THE APPLICANT MAY ENTER~~
 23 ~~INTO A CONTRACT WITH THE DEPARTMENT THE DEPARTMENT MAY~~
 24 ~~CONTRACT WITH AN APPLICANT FOR THE DEVELOPMENT OF~~
 25 ~~INFORMATION, PROVISION OF SERVICES AND PAYMENT OF FEES AND~~

1 COSTS REQUIRED UNDER THIS CHAPTER, THE CONTRACT MAY
 2 CONTINUE AN AGREEMENT ENTERED INTO PURSUANT TO 75-20-106A
 3 THE AMOUNT PAID UNDER ANY PAYMENTS MADE TO THE DEPARTMENT
 4 UNDER SUCH A CONTRACT SHALL BE CREDITED AGAINST THE FEE
 5 PAYABLE HEREUNDER. NOTWITHSTANDING THE PROVISIONS OF
 6 SUBSECTIONS (2)(B) AND (2)(C) THIS SECTION, THE REVENUE
 7 DERIVED FROM THE FILING FEE MUST BE SUFFICIENT TO ENABLE THE
 8 DEPARTMENT, THE DEPARTMENT OF HEALTH, THE BOARD, THE BOARD
 9 OF HEALTH, AND THE AGENCIES LISTED IN 75-20-2364.5
 10 75-20-216(5) TO CARRY OUT THEIR RESPONSIBILITIES UNDER THIS
 11 CHAPTER. THE DEPARTMENT WILL RETAIN THE AUTHORITY TO MAY
 12 AMEND A CONTRACT UPON GOOD CAUSE SHOWN, TO REQUIRE
 13 ADDITIONAL PAYMENTS FOR NECESSARY EXPENSES UP TO THE LIMITS
 14 SET FORTH IN SUBSECTIONS SUBSECTION (1)(A) AND (1)(B) ABOVE
 15 UPON 30 DAYS' NOTICE TO THE APPLICANT. THE DEPARTMENT AND
 16 APPLICANT MAY ENTER INTO A CONTRACT WHICH EXCEEDS THE SCALE
 17 PROVIDED IN SUBSECTION (1)(A).

18 5-7(B) If an agreement A CONTRACT is not entered INTO,
 19 but the applicant desires to HAVE SHALL pay the filing fee
 20 in installments, the applicant may pay the filing fee in
 21 accordance with a schedule of installments developed by the
 22 department, provided that no one installment may exceed 20%
 23 of the total filing fee provided for in subsection (1).

24 (3) The estimated cost of upgrading an existing
 25 transmission substation may not be included in the estimated

1 cost of a proposed facility for the purpose of calculating a
 2 filling fee.

3 5-7(5) If an application consists of a combination of
 4 two or more facilities, the filing fee shall be based on the
 5 total estimated cost of the combined facilities.

6 5-7(5) The applicant is entitled to an accounting of
 7 moneys expended and to a refund with interest at the rate of
 8 6% a year of that portion of the filing fee not expended by
 9 the department in carrying out its responsibilities under
 10 this chapter. A refund shall be made after all
 11 administrative and judicial remedies have been exhausted by
 12 all parties to the certification proceedings.

13 5-7(6) The revenues derived from filing fees shall be
 14 used by the department in compiling the information required
 15 for rendering a decision on a certificate and for carrying
 16 out its and the board's other responsibilities under this
 17 chapter with respect to the facility covered by the
 18 certificate for a period not to exceed 5 years after the
 19 certificate is issued for facilities defined in
 20 75-20-104(7)(b) and (c) or not to exceed 10 years after the
 21 certificate is issued for facilities defined in
 22 75-20-104(7)(a) and (d) except that a minimum of 2%
 23 of the revenues derived shall be allocated to the attorney
 24 general by the department if he becomes an active party to
 25 the certification proceedings."

1 Section 9. Section 75-20-216, MCA, is amended to read:
 2 "75-20-216. Study, evaluation, and report on proposed
 3 facility -- assistance by other agencies. (1) After receipt
 4 of an application, the department AND DEPARTMENT OF HEALTH
 5 shall within 30 90 days notify the applicant in writing
 6 that:

7 (a) the application is in compliance and is accepted
 8 as complete; or

9 (b) the application is not in compliance and list the
 10 deficiencies therein; and upon correction of these
 11 deficiencies and resubmission by the applicant, the
 12 department AND DEPARTMENT OF HEALTH shall within 30 days
 13 notify the applicant in writing that the application is in
 14 compliance and is accepted as complete.

15 ~~(2) if an application is accepted as complete within
 16 60 days of the original receipt by the department under
 17 subsection (1) it shall be the application's effective filing date
 18 and receipt date relates back to the original date the
 19 application was filed in all other cases the effective
 20 filing and receipt date is the date on which the department
 21 accepts the application as complete.~~

22 ~~(3) Upon receipt of an application complying
 23 with 75-20-211 through 75-20-215, and this section, the
 24 department shall commence an intensive study and evaluation
 25 of the proposed facility and its effects, considering all~~

1 the APPLICABLE criteria listed in 75-20-301 and 75-20-503
 2 AND THE DEPARTMENT OF HEALTH SHALL COMMENCE A STUDY TO
 3 ENABLE IT OR THE BOARD OF HEALTH TO ISSUE A DECISION,
 4 OPINION, ORDER, CERTIFICATION, OR PERMIT AS PROVIDED IN
 5 SUBSECTION (3). The department AND DEPARTMENT OF HEALTH
 6 shall use, to the extent it considers THEY CONSIDER
 7 applicable, valid and useful existing studies and reports
 8 submitted by the applicant or compiled by a state or federal
 9 agency.

10 ~~(3) THE DEPARTMENT OF HEALTH SHALL WITHIN 1 YEAR
 11 FOLLOWING THE DATE OF ACCEPTANCE OF AN APPLICATION, AND THE
 12 BOARD OF HEALTH, IF APPLICABLE, WITHIN AN ADDITIONAL 6
 13 MONTHS, SHALL ISSUE ANY DECISION, OPINION, ORDER,
 14 CERTIFICATION, OR PERMIT REQUIRED BY STATE OR FEDERAL AIR
 15 AND WATER QUALITY LAWS AND THIS CHAPTER. THE DEPARTMENT OF
 16 HEALTH AND THE BOARD OF HEALTH SHALL CONSIDER AIR AND WATER
 17 QUALITY IMPACTS AND DETERMINE COMPLIANCE WITH AIR AND WATER
 18 QUALITY STANDARDS AND IMPLEMENTATION PLANS FOR THE PRIMARY
 19 AND REASONABLE ALTERNATE LOCATIONS IN THEIR DECISION,
 20 OPINION, ORDER, CERTIFICATION, OR PERMIT. THE DECISION,
 21 OPINION, ORDER, CERTIFICATION, OR PERMIT, WITH OR WITHOUT
 22 CONDITIONS, IS CONCLUSIVE ON ALL MATTERS OF AIR AND WATER
 23 QUALITY IMPACTS UNDER THE FEDERAL AND STATE AIR AND WATER
 24 QUALITY STATUTES THAT THE DEPARTMENT OF HEALTH AND BOARD OF
 25 HEALTH ADMINISTER, AND FOR THE PURPOSES OF THIS CHAPTER AS~~

1 ANY OF THE CRITERIA SPECIFIED IN 75-20-303(3) AND (4) WHERE
 2 APPLICABLE, THAT ARE A PART OF THE DETERMINATIONS MADE UNDER
 3 FEDERAL AND STATE AIR AND WATER QUALITY STATUTES. ALTHOUGH
 4 THE DECISION, OPINION, ORDER, CERTIFICATION, OR PERMIT
 5 ISSUED UNDER THIS SUBSECTION IS CONCLUSIVE, THE BOARD
 6 RETAINS AUTHORITY TO MAKE THE DETERMINATION REQUIRED UNDER
 7 75-20-301(2)(C). THE DECISION, OPINION, ORDER,
 8 CERTIFICATION, OR PERMIT OF THE DEPARTMENT OF HEALTH OR THE
 9 BOARD OF HEALTH SATISFIES THE REVIEW REQUIREMENTS BY THOSE
 10 AGENCIES AND SHALL BE ACCEPTABLE IN LIEU OF AN ENVIRONMENTAL
 11 IMPACT STATEMENT UNDER THE MONTANA ENVIRONMENTAL POLICY ACT.
 12 A COPY OF THE DECISION, OPINION, ORDER, CERTIFICATION, OR
 13 PERMIT AND THE ENVIRONMENTAL IMPACT STATEMENT, IF ANY, BY
 14 THE DEPARTMENT OF HEALTH OR BOARD OF HEALTH SHALL BE SERVED
 15 UPON THE DEPARTMENT AND THE BOARD AND SHALL BE UTILIZED AS
 16 PART OF THEIR FINAL SITE SELECTION PROCESS. PRIOR TO THE
 17 ISSUANCE OF A PRELIMINARY DECISION BY THE DEPARTMENT OF
 18 HEALTH AND PURSUANT TO RULES ADOPTED BY THE BOARD OF HEALTH
 19 THE DEPARTMENT OF HEALTH SHALL PROVIDE AN OPPORTUNITY FOR
 20 PUBLIC REVIEW AND COMMENT. A DECISION BY THE DEPARTMENT OF
 21 HEALTH OR BOARD OF HEALTH IS SUBJECT TO APPELLATE REVIEW
 22 PURSUANT TO THE AIR AND WATER QUALITY STATUTES ADMINISTERED
 23 BY THE DEPARTMENT OF HEALTH AND BOARD OF HEALTH.
 24 t27141 Within 2 years to 22 months following receipt
 25 acceptance of an application for a facility as defined in

1 (a) and (d) of 75-20-104~~t77~~ 75-20-104~~t87~~ 75-20-104(101) and
 2 for a facility as defined in (b) and (c) of 75-20-104~~t77~~
 3 75-20-104~~t87~~ 75-20-104(101) which is more than 30 miles in
 4 length and within 1 year for a facility as defined in (b)
 5 and (c) of 75-20-104~~t77~~ 75-20-104~~t87~~ 75-20-104(101) which is
 6 30 miles or less in length, the department shall make a
 7 report to the board which shall contain the department's
 8 studies, evaluations, recommendations, other pertinent
 9 documents resulting from its study and evaluation, and the
 10 ftnet an environmental impact statement or analysis prepared
 11 pursuant to the Montana Environmental Policy Act, if any.
 12 If the application is for a combination of two or more
 13 facilities, the department shall make its report to the
 14 board within the greater of the lengths of time provided for
 15 in this subsection for either of the facilities.
 16 t37151 The departments of health--and--environmental
 17 sciences, highways, community affairs, fish and game, state
 18 lands, revenues, and public service regulation shall report
 19 to the department information relating to the impact of the
 20 proposed site on each department's area of expertise. The
 21 report may include opinions as to the advisability of
 22 granting, denying, or modifying the certificate. The
 23 department shall allocate funds obtained from filing fees to
 24 the departments making reports to reimburse them for the
 25 costs of compiling information and issuing the required

1 report."

2 SECTION 9. SECTION 75-20-217, MCA, IS AMENDED TO READ:
 3 75-20-217. Voiding an application. An application may
 4 be voided by the department for:

5 (1) any material and knowingly false statement in the
 6 application or in accompanying statements or studies
 7 required of the applicant;

8 (2) failure to file an application in substantially
 9 the form and content required by this chapter and the rules
 10 adopted thereunder; or

11 (3) failure to deposit the filing fee with--the
 12 application as required by provided in 75-20-215."

13 Section 10. Section 75-20-218, MCA, is amended to
 14 read:

15 "75-20-218. Hearing date -- location -- department to
 16 act as staff -- hearings to be held jointly. (1) Upon
 17 receipt of the department's report submitted under
 18 75-20-216, the board shall set a date for a hearing to begin
 19 not more than 120 days after the receipt. Except for those
 20 hearings involving applications submitted for facilities as
 21 defined in (b) and (c) of 75-20-204(7), 75-20-204(8)
 22 75-20-104(10), certification hearings shall be conducted by
 23 the board in the county seat of Lewis and Clark County or
 24 the county in which the facility or the greater portion
 25 thereof is to be located.

1 12) If the THE EXCEPT AS PROVIDED IN 75-20-221(2), THE
 2 department does not participate as an active party in a
 3 certification proceeding, it shall act as the staff for the
 4 board throughout the decisionmaking process and the board
 5 may request the department to present testimony or
 6 cross-examine witnesses as the board considers necessary and
 7 appropriate.

8 13) At the request of the applicant, the duly
 9 authorized state air and water quality agencies shall hold
 10 any required permit hearings required under laws
 11 administered by those agencies in conjunction with the board
 12 certification hearings. The IN SUCH A CONJUNCTIVE HEARING THE
 13 time periods established for reviewing an application and
 14 for issuing a decision on certification of a proposed
 15 facility under this chapter supersedes the time periods
 16 specified in other laws administered by the duly authorized
 17 state air and water quality agencies."

18 Section 10. Section 75-20-219, MCA, is amended to
 19 read:

20 "75-20-219. Hearing on amendment of application
 21 certificate. (1) On an application for an amendment of a
 22 certificate, the board shall hold a hearing in the same
 23 manner as a hearing is held on an application for a
 24 certificate if the board determines that the proposed change
 25 in the facility would result in any material increase in any

1 environmental impact of the facility or a substantial change
 2 in the location of all or a portion of the facility other
 3 than as provided in the alternates set forth in the
 4 applications

5 ~~if an application for an amendment by an applicant
 6 results from the request of an affected landowner upon whose
 7 land the facility is located or from the requirements of
 8 other government agencies and if the amendment would not
 9 result in any material increase in any environmental impact
 10 and if the amendment would not result in a substantial
 11 change in the location of all or a portion of the facility
 12 the board may upon recommendation by the department grant
 13 an amendment to the certificate upon such terms and conditions
 14 or modifications as the board considers appropriate. The
 15 board's decision shall be made after 30 days notice to
 16 affected parties~~

17 ~~if a decision made by the board pursuant to
 18 subsections (1) and (2) above is subject to judicial review
 19 under the Montana Administrative Procedure Act."~~

20 SECTION 11. SECTION 75-20-219, MCA, IS AMENDED TO
 21 READ:

22 "75-20-219. Hearing on amendment of application
 23 Amendments to a certificate. On an application for an
 24 amendment of a certificate, the board shall hold a hearing
 25 in the same manner as a hearing is held on an application

1 for a certificate if the proposed change in the facility
 2 would result in any material increase in any environmental
 3 impact of the facility or a substantial change in the
 4 location of all or a portion of the facility other than as
 5 provided in the alternates set forth in the application. In
 6 within 30 days after notice of an amendment to a certificate
 7 is given as set forth in 75-20-213(1) including notice to
 8 all active parties to the original proceeding, the
 9 department shall determine whether the proposed change in
 10 the facility would result in any material increase in any
 11 environmental impact of the facility or a substantial change
 12 in the location of all or a portion of the facility other
 13 than as provided in the alternates set forth in the original
 14 application. If the department determines that the proposed
 15 change would result in any material increase in any
 16 environmental impact of the facility or a substantial change
 17 in the location of all or a portion of the facility, the
 18 board shall hold a hearing in the same manner as a hearing
 19 is held on an application for a certificate. After hearing,
 20 the board shall grant, deny, or modify the amendment with
 21 such conditions as it deems appropriate.

22 ~~(2) In those cases where the department determines
 23 that the proposed change in the facility would not result in
 24 any material increase in any environmental impact or would
 25 not be a substantial change in the location of all or a~~

1 portion of the facility, the board shall automatically grant
 2 the amendment either as applied for or upon such terms or
 3 conditions as the board considers appropriate unless the
 4 department's determination is appealed to the board within
 5 15 days after notice of the department's determination is
 6 given.

7 (3) If a hearing is required, the applicant has the
 8 burden of showing by clear and convincing evidence that the
 9 amendment should be granted.

10 (4) If an amendment is required to a certificate which
 11 would affect, amend, alter or modify a decision, opinion,
 12 order, certification, or permit issued by the department of
 13 health or board of health, such amendment must be processed
 14 under the applicable statutes administered by the department
 15 of health or board of health.

16 Section 12. Section 75-20-220, MCA, is amended to
 17 read:

18 *75-20-220. Hearing examiner -- restrictions --
 19 duties. (1) If the board appoints a hearing examiner to
 20 conduct any certification proceedings under this chapter,
 21 the hearing examiner may not be a member of the board or, an
 22 employee of the department, or a member or employee of a
 23 duty--authorized--state--air--and--water--quality--agency THE
 24 DEPARTMENT OF HEALTH OR BOARD OF HEALTH. A hearing examiner,
 25 if any, shall be appointed by the board within 20 days after

1 the department's report has been filed with the board. If a
 2 duty--authorized--state--air--and--water--quality--agency--permit
 3 hearing is required EIGHTIVE HEARING IS HELD HEARING IS
 4 HELD BEFORE THE BOARD OF HEALTH, the board and the agency
 5 BOARD OF HEALTH shall mutually agree on the appointment of a
 6 hearing examiner TO PRESIDE AT BOTH HEARINGS.

7 (2) A prehearing conference shall be held following
 8 notice within 60 days after the department's report has been
 9 filed with the board.

10 (3) The prehearing conference shall be organized and
 11 supervised by the hearing examiner.

12 (4) The prehearing conference shall be directed toward
 13 a determination of the issues presented by the application,
 14 the department's report, and an identification of the
 15 witnesses and documentary exhibits to be presented by the
 16 active parties who intend to participate in the hearing.

17 (5) The hearing examiner shall require the active
 18 parties to submit, in writing, and serve upon the other
 19 active parties, all direct testimony which they propose and
 20 any studies, investigations, reports, or other exhibits that
 21 any active party wishes the board to consider. These written
 22 exhibits and any documents that the board itself wishes to
 23 use or rely on shall be submitted and served in like manner,
 24 at least 20 days prior to the date set for the hearing. For
 25 good cause shown, the hearing examiner may allow the

1 Introduction of new evidence at any time.

2 (6) THE HEARING EXAMINER SHALL ALLOW DISCOVERY WHICH
 3 SHALL BE COMPLETED BEFORE THE COMMENCEMENT OF THE HEARING,
 4 UPON GOOD CAUSE SHOWN AND UNDER SUCH OTHER CONDITIONS AS THE
 5 HEARING EXAMINER SHALL PRESCRIBE.

6 (6)(7) Public witnesses and other interested public
 7 parties may appear and present oral testimony at the hearing
 8 or submit written testimony to the hearing examiner at the
 9 time of their appearance. These witnesses are subject to
 10 cross-examination.

11 ~~for~~--ALL--PROCEEDINGS--UNDER--THIS--CHAPTER--ARE--GOVERNED--BY
 12 THE--PROCEDURES--SET--FORTH--IN--THIS--CHAPTER--AND--BY--RULES
 13 ADOPTED--BY--THE--BOARD--NO--OTHER--RULES--OR--PROCEDURE--OR
 14 EVIDENCE--SHALL--APPLY--EXCEPT--THAT--THE--CONTESTED--CASE
 15 PROCEDURES--OF--THE--MONTANA--ADMINISTRATIVE--PROCEDURE--ACT--SHALL
 16 APPLY--IF--NOT--IN--CONFLICT--WITH--THE--PROCEDURES--SET--FORTH--IN
 17 THIS--CHAPTER.

18 ~~for~~--The--hearing--examiner--shall--issue--a--prehearing
 19 order--specifying--the--issues--of--fact--and--of--law--identifying
 20 the--witnesses--of--the--active--parties--naming--the--public
 21 witnesses--and--other--interested--parties--who--have--submitted
 22 written--testimony--scheduling--times--for--the--presentation--of
 23 oral--testimony--by--public--parties--outlining--the--order--in
 24 which--the--hearing--shall--proceed--and--establishing--any--other
 25 special--rules--to--expedite--the--hearing--which--the--hearing

1 examiner may adopt

2 ~~for~~--THE--HEARING--EXAMINER--SHALL--ADOPT--RULES--DESIGNED--TO
 3 EXCLUDE--REPETITIVE--REDUNDANT--OR--IRRELEVANT--TESTIMONY--AND
 4 SHALL--ADOPT--OTHER--RULES--OF--EVIDENCE--TO--EXPEDITE--AND--INSURE
 5 AN--PROPERLY--PROCEEDING.

6 ~~for~~--THE--HEARING--EXAMINER--SHALL--ISSUE--A--PREHEARING
 7 ORDER--SPECIFYING--THE--ISSUES--OF--FACT--AND--OF--LAW--IDENTIFYING
 8 THE--WITNESSES--OF--THE--ACTIVE--PARTIES--NAMING--THE--PUBLIC
 9 WITNESSES--AND--OTHER--INTERESTED--PARTIES--WHO--HAVE--SUBMITTED
 10 WRITTEN--TESTIMONY--IN--LIEU--OF--APPEARANCE--OUTLINING--THE--ORDER
 11 IN--WHICH--THE--HEARING--SHALL--PROCEED--SETTING--FORTH--THOSE
 12 SECTION--75-20-301--CRITERIA--AS--TO--WHICH--NO--ISSUE--OF--FACT--OR
 13 LAW--HAS--BEEN--RAISED--WHICH--ARE--TO--BE--CONCLUSIVELY--PRESUMED
 14 AND--ARE--NOT--SUBJECT--TO--FURTHER--PROOF--EXCEPT--FOR--GOOD--CAUSE
 15 SHOWN--AND--ANY--OTHER--SPECIAL--RULES--TO--EXPEDITE--THE--HEARING
 16 WHICH--THE--HEARING--EXAMINER--SHALL--ADOPT--WITH--THE--APPROVAL--OF
 17 THE--BOARD.

18 ~~for~~--At--the--conclusion--of--the--hearing--the
 19 hearing--examiner--shall--declare--the--hearing--closed--and--shall--
 20 within--90--60--days--of--that--date--prepare--and--submit--to--the
 21 board--and--the--duly--authorized--state--air--and--water--quality
 22 agency--if--necessary--IN--THE--CASE--OF--A--CONJUNCTIVE--HEARING--
 23 WITHIN--90--DAYS--TO--THE--BOARD--AND--THE--BOARD--OF--HEALTH
 24 proposed--findings--of--fact--conclusions--of--law--and--a
 25 recommended--decision.

1 ~~§9-2-27(10)~~ The hearing examiner appointed to conduct
 2 a certification proceeding under this chapter shall insure
 3 that the time of the proceeding, from the date the
 4 department's report is filed with the board until the
 5 recommended report and order of the examiner is filed with
 6 the board, does not exceed ~~2~~ 9 calendar months unless
 7 extended by the board for good cause.

8 ~~§9-2-27(11)~~ THE BOARD OR HEARING EXAMINER MAY WAIVE ALL OR
 9 A PORTION OF THE PROCEDURES SET FORTH IN SUBSECTIONS 121
 10 THROUGH ~~181~~ ~~181~~ OF THIS SECTION TO EXPEDITE THE HEARING FOR
 11 ~~FACILITY--DEFINED--IN--SUBSECTIONS--§9-2-8--AND--§9-2-6--OF~~
 12 ~~75-20-104w~~ A FACILITY WHEN THE DEPARTMENT HAS RECOMMENDED
 13 APPROVAL OF A FACILITY AND NO OBJECTIONS HAVE BEEN FILED."

14 Section 13. Section 75-20-221, MCA, is amended to
 15 read:

16 "75-20-221. Parties to certification--proceeding
 17 PROCEEDINGS -- waiver--~~attorney-general~~. (1) The parties
 18 to a certification proceeding OR TO A PROCEEDING INVOLVING
 19 THE ISSUANCE OF A DECISION, OPINION, ORDER, CERTIFICATION,
 20 OR PERMIT BY THE BOARD OF HEALTH UNDER THIS CHAPTER may
 21 include as active parties:

22 (a) the applicant;
 23 (b) each municipality political entity and government
 24 agency, INCLUDING THE DEPARTMENT OF HEALTH, entitled to
 25 receive service of a copy of the application under

1 75-20-211(3);
 2 (c) any person residing in a municipality entitled to
 3 receive service of a copy of the application under
 4 75-20-211(5);
 5 (d) any nonprofit organization ~~INTERESTED--IN--AND~~
 6 ~~AFFECTED--BY--THE--APPLICATION--AND--WHICH--IS~~ formed in whole or
 7 in part to promote conservation or natural beauty; to
 8 protect the environment, personal health, or other
 9 biological values; to preserve historical sites; to promote
 10 consumer interests; to represent commercial and industrial
 11 groups; or to promote the orderly development of the areas
 12 in which the facility is to be located; or
 13 (e) any other interested person ~~who--establishes--an~~
 14 ~~interest--in--the--proceeding AFFECTED--BY--THE--APPLICATION WHO~~
 15 ~~ESTABLISHES AN INTEREST IN THE PROCEEDING~~; and
 16 ~~§9-2-104w~~
 17 ~~§9-2-104w~~
 18 (2) THE DEPARTMENT SHALL BE AN ACTIVE PARTY IN ANY
 19 CERTIFICATION PROCEEDING IN WHICH THE DEPARTMENT RECOMMENDS
 20 DENIAL OF ALL OR A PORTION OF A FACILITY;
 21 (2)(3) The parties to a certification proceeding may
 22 also include, as public parties, any Montana citizen and any
 23 party referred to in (b), (c), (d), or (e) of subsection
 24 (1);
 25 (2)(3)(4) Any party identified in (b), (c), (d), and

1 ~~ter--of--subsection--(2) waives his the right to be a party if~~
 2 ~~he the party does not participate orally-at in the hearing~~
 3 ~~before the board OR THE BOARD OF HEALTH.~~

4 ~~44--the--attorney--general--shall--participate--as--an~~
 5 ~~active--party--in--certification--proceedings--involving~~
 6 ~~facilities--described--in--75-20-104(a)(f)(x)~~

7 ~~45--the--attorney--general--shall--be--the--representative~~
 8 ~~of--the--public--interest--on--all--matters--raised--in--the--hearings~~
 9 ~~related--to--the--criteria--established--in--75-20-301--and~~
 10 ~~75-20-503."~~

11 Section 14. Section 75-20-222, MCA, is amended to
 12 read:

13 "75-20-222. Record of hearing -- procedure -- rules of
 14 evidence -- burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

20 (2) A record shall be made of the hearing and of all testimony taken.

22 ~~47--Except-as-expressly-modified-in-75-20-228x The the~~
 23 ~~contested-case--procedures--of--the--Montana--Administrative~~
 24 ~~Procedure--Act--shall--apply--to--the--hearing----except--that~~
 25 ~~neither-common-law-nor--statutory--rules--of--evidence--need~~

1 empty---The--board--may--make--rules--designed--to--exclude
 2 repetitive, redundant, or irrelevant testimony.

3 ~~44131~~ In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

7 441 ALL PROCEEDINGS UNDER THIS CHAPTER ARE GOVERNED BY
 8 THE PROCEDURES SET FORTH IN THIS CHAPTER, THE PROCEDURAL
 9 RULES ADOPTED BY THE BOARD, AND THE MONTANA RULES OF
 10 EVIDENCE UNLESS ONE OR MORE RULES OF EVIDENCE ARE WAIVED BY
 11 THE HEARING EXAMINER UPON A SHOWING OF GOOD CAUSE BY ONE OR
 12 MORE OF THE PARTIES TO THE HEARING. NO OTHER RULES OF
 13 PROCEDURE OR EVIDENCE SHALL APPLY EXCEPT THAT THE CONTESTED
 14 CASE PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT
 15 SHALL APPLY IF NOT IN CONFLICT WITH THE PROCEDURES SET FORTH
 16 IN THIS CHAPTER OR THE PROCEDURAL RULES ADOPTED BY THE
 17 BOARD."

18 Section 15. Section 75-20-301, MCA, is amended to
 19 read:

20 "75-20-301. Decision of board -- findings necessary
 21 for certification. (1) Within 90 60 days after the last day
 22 of the hearing, submission of the recommended decision by
 23 the hearing examiner, the board shall make complete
 24 findings, issue an opinion, and render a decision upon the
 25 record, either granting or denying the application as filed

1 or granting it upon such terms, conditions, or modifications
 2 of the construction, operation, or maintenance of the
 3 facility as the board considers appropriate.

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

7 (a) the basis of the need for the facility;
 8 (b) the nature of the probable environmental impact;
 9 (c) that the facility represents the minimum adverse
 10 environmental impact, considering the state of available
 11 technology and the nature and economics of the various
 12 alternatives;

13 (d) each of the criteria listed in 75-20-503;
 14 (e) in the case of an electric, gas, or liquid
 15 transmission line or aqueduct:

16 (i) what part, if any, of the line or aqueduct shall
 17 be located underground;

18 (ii) that the facility is consistent with regional
 19 plans for expansion of the appropriate grid of the utility
 20 systems serving the state and interconnected utility
 21 systems; and

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

24 (f) that the location of the facility as proposed
 25 conforms to applicable state and local laws and regulations

1 issued thereunder, except that the board may refuse to apply
 2 any local law or regulation if it finds that, as applied to
 3 the proposed facility, the law or regulation is unreasonably
 4 restrictive in view of the existing technology, of factors
 5 of cost or economics, or of the needs of consumers, whether
 6 located inside or outside of the directly affected
 7 government subdivisions;

8 (g) that the facility will serve the public interest,
 9 convenience, and necessity; and

10 (h) ~~that--duty--authorized-state-air-and-water-quality~~
 11 ~~agencies--have--certified--that--the--proposed--facility--will--not~~
 12 ~~viate--state--and--federally--established--standards--and~~
 13 ~~implementation--plans--The--judgments--of--duty--authorized--air~~
 14 ~~and--water--quality--agencies--are--conclusive--on--all--questions~~
 15 ~~related--to--the--satisfaction--of--state--and--federal--air--and~~
 16 ~~water--quality--standards~~ THAT THE DEPARTMENT OF HEALTH OR
 17 BOARD OF HEALTH HAVE ISSUED A DECISION, OPINION, ORDER,
 18 CERTIFICATION, OR PERMIT AS REQUIRED BY 75-20-216(3)a
 19 75-20-216(3)a

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

23 (a) the items listed in subsections (2)(a) and (2)(b)
 24 of this section;

25 (b) the benefits to the applicant and the state

1 resulting from the proposed facility;

2 (c) the effects of the economic activity resulting
3 from the proposed facility;

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

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

7 (f) Considerations of need, public need, or public
8 convenience and necessity and demonstration thereof by the
9 applicant shall apply only to utility facilities.

10 if-the-duty-authorized-state-air-and-water-quality
11 agency-is-required-to-hold-a-hearing--the-agency-shall
12 within--45-days-after-substitution-of-the-recommended-decision
13 by-the-hearing-examiner--make-complete-findings--issue-an
14 opinion--and-render-a-decision-upon-the-records-which-shall
15 be-certified-to-the-board--within--10--days--the-agency
16 decision--constitutes--the--judgment--of--the--agency--on--all
17 questions--related--to--the--satisfaction--of--state--and--federal
18 air--and--water--quality--standards--and--implementation--plans
19 the--final--decision--of--the--agency--is--conclusive--on--all
20 matters--related--to--the--satisfaction--of--state--and--federal--air
21 and--water--quality--standards--and--the--decision--shall--include
22 the--permits--required--under--the--laws--administered--by--the--duty
23 authorized--state--air--and--water--quality--agencies--"

24 Section 16. Section 75-20-302, MCA, is amended to
25 read:

1 "75-20-302. Conditions imposed. If the board
2 determines that the location of all or a part of the
3 proposed facility should be modified, it may condition its
4 certificate upon such modification, provided that the
5 entities--and--persons--residing--therein--in--the--area
6 affected by the modification have been given reasonable
7 notice of the modification."

8 Section 17. Section 75-20-304, MCA, is amended to
9 read:

10 "75-20-304. Waiver of provisions of certification
11 proceedings. ~~(1)~~ Any of the provisions described in
12 75-20-216 through 75-20-222 and this part may be waived by
13 the board for good cause shown with respect to applications
14 filed before January 1, 1975. Applications for certificates
15 under this subsection must be promptly filed."

16 ~~(2)~~ The board may waive compliance with any of the
17 provisions of 75-20-216 through 75-20-222, 75-20-501, and
18 this part if the applicant makes a clear and convincing
19 showing to the board at a public hearing that an immediate,
20 urgent need for a facility exists and that the applicant did
21 not have knowledge that the need for the facility existed
22 sufficiently in advance to fully comply with the provisions
23 of 75-20-216 through 75-20-222, 75-20-501, and this part.

24 ~~(3)~~ The board may waive compliance with any of the
25 provisions of this chapter upon receipt of notice by a

1 utility or person subject to this chapter that a facility or
 2 associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrections, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.*

9 Section 18. Section 75-20-401, MCA, is amended to
 10 read:

11 "75-20-401. Additional requirements by other
 12 governmental agencies not permitted after issuance of
 13 certificate -- exceptions. (1) Notwithstanding any other
 14 law, no state or regional agency or municipality or other
 15 local government may require any approval, consent, permit,
 16 certificate, or other condition for the construction,
 17 operation, or maintenance of a facility authorized by a
 18 certificate issued pursuant to this chapter, except that the
 19 state air and water quality agency or agencies shall retain
 20 authority~~s--excluding--the--authority--to--conduct--hearings--and~~
 21 issue~~permits--other--than--as--herein--provided~~ which they have
 22 or may be granted to determine compliance of the proposed
 23 facility with state and federal standards and implementation
 24 plans for air and water quality and to enforce those
 25 standards.

1 (2) This chapter does not prevent the application of
 2 state laws for the protection of employees engaged in the
 3 construction, operation, or maintenance of a facility.*

4 Section 19. Section 75-20-402, MCA, is amended to
 5 read:

6 "75-20-402. Monitoring. The board ~~and the department~~
 7 ~~and--the--state--air--and--water--quality--agencies~~ THE DEPARTMENT
 8 OF HEALTH AND THE BOARD OF HEALTH shall monitor the
 9 operations of all certificated facilities for assuring
 10 continuing compliance with this chapter and certificates
 11 issued hereunder and for discovering and preventing
 12 noncompliance with this chapter and the certificates. The
 13 applicant shall pay all expenses related to the monitoring
 14 plan established in subsection (3)(a)(v) of 75-20-303 to the
 15 extent federal funds AVAILABLE FOR THE FACILITY, AS
 16 DETERMINED BY THE DEPARTMENT OF HEALTH, have not been
 17 provided for such purposes."

18 Section 20. Section 75-20-406, MCA, is amended to
 19 read:

20 "75-20-406. Judicial review of board decision. (1) Any
 21 active party as defined in 75-20-221 aggrieved by the final
 22 decision of the board on an application for a certificate
 23 may obtain judicial review of that decision by the filing of
 24 a petition in a state district court of competent
 25 jurisdiction.

1 (2) The judicial review procedure shall be the same as
 2 that for contested cases under the Montana Administrative
 3 Procedure Act."

4 Section 21. Section 75-20-408, MCA, is amended to
 5 read:

6 "75-20-408. Penalties for violation of chapter --
 7 civil action by attorney general. (1) (a) Whoever commences
 8 to construct or operate a facility without first obtaining a
 9 certificate required under 75-20-201 or a waiver thereof
 10 under 75-20-304~~(3)~~ 75-20-304~~(2)~~; having first obtained a
 11 certificate, constructs, operates, or maintains a facility
 12 other than in compliance with the certificate; violates any
 13 other provision of this chapter or any rule or order adopted
 14 thereunder; knowingly submits false information in any
 15 report, ~~10-year~~ plan or application required by this chapter
 16 or rule or order adopted thereunder; or causes any of the
 17 aforementioned acts to occur shall be liable to a civil
 18 penalty of not more than \$10,000 for each violation.

19 (b) Each day of a continuing violation shall
 20 constitute a separate offense.

21 (c) The penalty shall be recoverable in a civil suit
 22 brought by the attorney general on behalf of the state in
 23 the first district court of Montana.

24 (2) Whoever knowingly and willfully violates
 25 subsection (1) shall be fined not more than \$10,000 for each

1 violation or imprisoned for not more than 1 year, or both.
 2 Each day of a continuing violation shall constitute a
 3 separate offense.

4 (3) In addition to any penalty provided in subsections
 5 (1) or (2), whenever the department determines that a person
 6 is violating or is about to violate any of the provisions of
 7 this section, it may refer the matter to the attorney
 8 general who may bring a civil action on behalf of the state
 9 in the first district court of Montana for injunctive or
 10 other appropriate relief against the violation and to
 11 enforce this chapter or a certificate issued hereunder. Upon
 12 a proper showing, a permanent or preliminary injunction or
 13 temporary restraining order shall be granted without bond.

14 (4) The department shall also enforce this chapter and
 15 bring legal actions to accomplish the enforcement through
 16 its own legal counsel.

17 (5) All fines and penalties collected shall be
 18 deposited in the earmarked revenue fund for the use of the
 19 department in administering this chapter."

20 Section 22. Section 75-20-501, MCA, is amended to
 21 read:

22 "75-20-501. Annual long-range plan submitted --
 23 contents -- available to public. (1) Each utility and each
 24 person contemplating the construction of a facility within
 25 this state in the ensuing 10 years shall furnish annually to

1 the department for its review a long-range plan for the
 2 construction and operation of facilities.

3 (2) The plan shall be submitted on April 1 of each
 4 year and shall include the following:

5 (a) the general location, size, and type of all
 6 facilities to be owned and operated by the utility or person
 7 whose construction is projected to commence during the
 8 ensuing 10 years, as well as those facilities to be removed
 9 from service during the planning period;

10 (b) in the case of utility facilities, a description
 11 of efforts by the utility or person to coordinate the plan
 12 with other utilities or persons so as to provide a
 13 coordinated regional plan for meeting the energy needs of
 14 the region;

15 (c) a description of the efforts to involve
 16 environmental protection and land use planning agencies in
 17 the planning process, as well as other efforts to identify
 18 and minimize environmental problems at the earliest possible
 19 stage in the planning process;

20 (d) projections of the demand for the service rendered
 21 by the utility or person and explanation of the basis for
 22 those projections and a description of the manner and extent
 23 to which the proposed facilities will meet the projected
 24 demand; and

25 (e) additional information that the board by rule or

1 the department on its own initiative or upon the advice of
 2 interested state agencies might request in order to carry
 3 out the purposes of this chapter.

4 (3) The plan shall be made available to the public by
 5 the department. The utility or person shall give public
 6 notice throughout the state of its plan by filing the plan
 7 with the environmental quality council, the department of
 8 health and environmental sciences, the department of
 9 highways, the department of public service regulation, the
 10 department of state lands, and the department of community
 11 affairs. Citizen environmental protection and resource
 12 planning groups and other interested persons may obtain a
 13 plan by written request and payment therefor to the
 14 department.

15 (4) A rural electric cooperative may furnish the
 16 department with a copy of the long-range plan and 2-year
 17 work plan required to be completed under federal rural
 18 electrification requirements in lieu of the long-range plan
 19 required in subsection (1).

20 (5) No person may file an application for a facility
 21 unless the facility had been adequately identified in a
 22 long-range plan at least 2 years prior to acceptance of an
 23 application by the department."

24 Section 23. Section 75-20-503, MCA, is amended to
 25 read:

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

7 (1) energy needs:

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

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

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

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

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

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

23 (2) land use impacts:

24 (a) area of land required and ultimate use;
25 (b) consistency with areawide state and regional land

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

1 (r) opportunities for joint use with energy-intensive
 2 industries or other activities to utilize the waste heat
 3 from facilities;

4 (3) water resources impacts:

5 (a) hydrologic studies of adequacy of water supply and
 6 impact of facility on streamflow, lakes, and reservoirs;

7 (b) hydrologic studies of impact of facilities on
 8 groundwater;

9 (c) cooling system evaluation, including consideration
 10 of alternatives;

11 (d) inventory of effluents, including physical,
 12 chemical, biological, and radiological characteristics;

13 (e) hydrologic studies of effects of effluents on
 14 receiving waters, including mixing characteristics of
 15 receiving waters, changed evaporation due to temperature
 16 differentials, and effect of discharge on bottom sediments;

17 (f) relationship to water quality standards;

18 (g) effects of changes in quantity and quality on
 19 water use by others, including both withdrawal and in situ
 20 uses;

21 (h) relationship to projected uses;

22 (i) relationship to water rights;

23 (j) effects on plant and animal life, including algae,
 24 macroinvertebrates, and fish population;

25 (k) effects on unique or otherwise significant

1 ecosystems, e.g., wetlands;

2 (l) monitoring programs;

3 (4) air quality impacts:

4 (a) meteorology--wind direction and velocity, ambient
 5 temperature ranges, precipitation values, inversion
 6 occurrence, other effects on dispersion;

7 (b) topography--factors affecting dispersion;

8 (c) standards in effect and projected for emissions;

9 (d) design capability to meet standards;

10 (e) emissions and controls:

11 (i) stack design;

12 (ii) particulates;

13 (iii) sulfur oxides;

14 (iv) oxides of nitrogen; and

15 (v) heavy metals, trace elements, radioactive
 16 materials, and other toxic substances;

17 (f) relationship to present and projected air quality
 18 of the area;

19 (g) monitoring program;

20 (5) solid wastes ~~impact~~ impacts:

21 (a) solid waste inventory;

22 (b) disposal program;

23 (c) relationship of disposal practices to
 24 environmental quality criteria;

25 (d) capacity of disposal sites to accept projected

1 waste loadings;

2 (6) radiation impacts:

3 (a) land use controls over development and population;

4 (b) wastes and associated disposal program for solid,

5 liquid, radioactive, and gaseous wastes;

6 (c) analyses and studies of the adequacy of

7 engineering safeguards and operating procedures;

8 (d) monitoring--adequacy of devices and sampling

9 techniques;

10 (7) noise impacts:

11 (a) construction period levels;

12 (b) operational levels;

13 (c) relationship of present and projected noise levels

14 to existing and potential stricter noise standards;

15 (d) monitoring--adequacy of devices and methods."

Section 23--Section 75-2-211, MCA, is amended to read:

75-2-211--Permits--for--construction,--installation,

alterations--or--use--{(1)}--The department shall provide for

the issuance--suspension--revocation--and--renewal--of--a

permit--issued--under--this--section.

{2)}--Not--later--than--180--days--before--construction--begins

of--any--machinery--equipment--device--or--facility--which--the

board--finds--may--directly--or--indirectly--cause--or--contribute

to--air--pollution--or--which--is--intended--primarily--to--prevent

or--control--the--emission--of--air--pollutants--and--not--later--than

1 120--days--before--installation,--alteration,--or--use--begins--the

2 owner--or--operator--shall--file--with--the--department--the

3 appropriate--permit--application--on--forms--available--from--the

4 department.

5 {3)}--The department may,--for--good--cause--shown,--waive

6 the--provisions--of--subsection--{(2)}--or--shorten--the--time

7 required--for--fitting--the--appropriate--applications.

8 {4)}--The department shall require that applications for

9 permits be accompanied by--any--plans,--specifications,--and

10 other--information--it--considers--necessary.

11 {5)}--An--application--is--not--considered--fitted--until--the

12 applicant--has--submitted--all--information--and--completed--all

13 application--forms--required--by--subsections--{(2)},--{(3)},--and--{(4)}.

14 However,--if--the--department--fails--to--notify--the--applicant--in

15 writing--within--30--days--after--the--purported--fitting--of--an

16 application--that--the--application--is--incomplete--and--fails--to

17 list--the--reasons--why--the--application--is--considered

18 incomplete,--the--application--is--considered--fitted--as--of--the

19 date--of--the--purported--fitting.

20 {6)}--Where--an--application--for--a--permit--requires--the

21 compilation--of--an--environmental--impact--statement--under--the

22 Montana--Environmental--Policy--Act,--the--department--shall

23 notify--the--applicant--in--writing--within--180--days--of--the

24 receipt--of--a--fitted--application,--as--defined--in--subsection

25 {5)},--of--the--approval--or--denial--of--the--application. However,

1 where an application does not require the compilation of an
 2 environmental impact statement, the department shall notify
 3 the applicant in writing within 60 days of the receipt of a
 4 fitted application, as defined in subsection 15(1) of the
 5 approval or denial of the application.

6 (7) When the department approves or denies the application for a permit under this section, a person who is
 7 jointly or severely adversely affected by the department's
 8 decision may request, within 15 days after the department
 9 renders its decision, upon affidavit setting forth the
 10 grounds therefor, a hearing before the board. A hearing
 11 shall be held under the provisions of the Montana
 12 Administrative Procedure Act.

13 (8) The department's decision on the application is
 14 not final unless 15 days have elapsed and there is no
 15 request for a hearing under this section. The fitting of a
 16 request for a hearing postpones the effective date of the
 17 department's decision until the conclusion of the hearing
 18 and issuance of a final decision by the board.

19 (9) For a facility defined in 75-20-104, an
 20 application for a permit under this chapter must be fitted as
 21 to insure coordination and compliance with the provisions
 22 of title 75, chapter 20, and this chapter.

23 NEW SECTION. Section 24. Order not stayed by appeal
 24 -- stay or suspension by court -- limitations.

1 Notwithstanding any contrary provision in the law, the
 2 pendency of an appeal from a board order does not
 3 automatically stay or suspend the operation of the order.
 4 During the pendency of the appeal, the court may upon motion
 5 by one of the parties stay or suspend, in whole or in part,
 6 the operation of the board's orders on terms the court
 7 considers just. The court's action must be in accordance
 8 with the practice of courts exercising equity jurisdiction,
 9 subject to the following limitations:

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

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

17 NEW SECTION. Section 25. Surety bond -- other
 18 security. If an order of the board is stayed or suspended,
 19 the court ~~may~~ MUST require a bond with good and
 20 sufficient surety conditioned that the party petitioning for
 21 review answer for all damages caused by the delay in
 22 enforcing the order of the board; EXCEPT THAT THE COST OF
 23 THE BOND IS NOT CHARGEABLE TO THE APPLICANT AS PART OF THE
 24 EE. If the party petitioning for review prevails upon final
 25 resolution of an appeal, he does not forfeit bond nor is he

1 responsible for damages caused by delay.

2 SECTION 26. Waiver of baseline data requirement if
3 existing contract. The department may in its discretion
4 waive the requirement that baseline data for the primary and
5 reasonable alternate locations be submitted with an
6 application under 75-20-211(1)(a)(v) in those cases in which
7 the applicant has, prior to July 1, 1979, entered into a
8 contract with the department to compile baseline
9 information.

10 Section 27. Codification. It is the intent of the
11 legislature that sections 24 and 25 become an integral part
12 of Title 75, chapter 20, MCA, and that the provisions of
13 that chapter apply to sections 24 and 25.

14 Section 28. Repealer. Sections 75-20-1101 through
15 75-20-1105, MCA, are repealed.

-End-

1 HOUSE BILL NO. 883

2 INTRODUCED BY BARDANOUVE, SCULLY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
6 SECTIONS 75-2-211, 75-20-103, 75-20-104, 75-20-203,
7 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-218-75-20-220
8 75-20-217 THROUGH 75-20-222, 75-20-301, 75-20-302,
9 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-408,
10 75-20-501, AND 75-20-503, MCA; AND REPEALING SECTIONS
11 75-20-1101 THROUGH 75-20-1105, MCA."

12

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

14 Section 1. Section 75-20-103, MCA, is amended to read:
15 "75-20-103. Chapter supersedes other laws or rules.
16 This chapter supersedes other laws or regulations except as
17 provided in 75-20-401. If any provision of this chapter is
18 in conflict with any other law of this state or any rule
19 promulgated thereunder, this chapter shall govern and
20 control and the other law or rule shall be deemed superseded
21 for the purpose of this chapter. Amendments to this chapter
22 shall have the same effect."

23 Section 2. Section 75-20-104, MCA, is amended to read:
24 "75-20-104. Definitions. In this chapter, unless the
25 context requires otherwise the following definitions apply:

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

4 (2) "Application" means an application for a
5 certificate submitted in accordance with this chapter and
6 the rules adopted hereunder.

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

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

16 (5) "BOARD OF HEALTH" MEANS THE BOARD OF HEALTH AND
17 ENVIRONMENTAL SCIENCES PROVIDED FOR IN 2-15-2104.

18 (4) "Certificate" means the certificate of
19 environmental compatibility and public need issued by the
20 board under this chapter that is required for the
21 construction or operation of a facility.

22 (5) "Commence to construct" means:
23 (a) any clearing of land, excavation, construction, or
24 other action that would affect the environment of the site
25 or route of a facility but does not mean changes needed for

Corrected Pages to insert in every Bill.

1 temporary use of sites or routes for nonutility purposes or
 2 uses in securing geological data, including necessary
 3 borings to ascertain foundation conditions;

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

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

14 (d) the relocation or upgrading of an existing
 15 facility defined by (b) or (c) of subsection ~~t7t t8t 1101~~
 16 including upgrading to a design capacity covered by
 17 subsection ~~t7t t8t 1101(b)~~, except that the term does not
 18 include normal maintenance or repair of an existing
 19 facility.

20 ~~t6t t7t 181~~ "Department" means the department of natural
 21 resources and conservation provided for in Title 2, chapter
 22 15, part 33.

23 (9) "DEPARTMENT OF HEALTH" MEANS THE DEPARTMENT OF
24 HEALTH AND ENVIRONMENTAL SCIENCES PROVIDED FOR IN TITLE 2,
25 CHAPTER 15, PART 21.

1 ~~t7t t8t 1101~~ "Facility" means:
 2 (a) each plant, unit, or other facility and
 3 associated facilities, except for oil and gas refineries,
 4 designed for or capable of:
 5 (i) generating 50 megawatts of electricity or more or
 6 any addition thereto (except pollution control facilities
 7 approved by the department of health and environmental
 8 sciences added to an existing plant) having an estimated
 9 cost in excess of \$250,000;
 10 (ii) producing 25 million cubic feet or ~~more~~ of gas
 11 ~~derived from coal~~ per day or ~~more~~ or any addition thereto
 12 having an estimated cost in excess of \$250,000;
 13 (iii) producing 25,000 barrels of liquid hydrocarbon
 14 products per day or more or any addition thereto having an
 15 estimated cost in excess of \$250,000;
 16 (iv) enriching uranium minerals or any addition thereto
 17 having an estimated cost in excess of \$250,000; or
 18 (v) utilizing, refining, or converting 500,000 tons of
 19 coal per year or more or any addition thereto having an
 20 estimated cost in excess of \$250,000;
 21 (b) each electric transmission line and associated
 22 facilities of a design capacity of more than 69 kilovolts,
 23 except that the term does not include an electric
 24 transmission line and associated facilities of a design
 25 capacity of 230 kilovolts or less and 10 miles or less in

1 not be a substantial change in the location of all or a
 2 portion of the facility, the board shall automatically grant
 3 the amendment either as applied for or upon such terms or
 4 conditions as the board considers appropriate unless the
 5 department's determination is appealed to the board within
 6 15 days after notice of the department's determination is
 7 given.

8 (3) If a hearing is required, the applicant has the
 9 burden of showing by clear and convincing evidence that the
 10 amendment should be granted.

11 (4) If an amendment is required to a certificate which
 12 would affect, amend, alter or modify a decision, opinion,
 13 order, certification, or permit issued by the department of
 14 health or board of health, such amendment must be processed
 15 under the applicable statutes administered by the department
 16 of health or board of health."

17 Section 12. Section 75-20-220, MCA, is amended to
 18 read:

19 "75-20-220. Hearing examiner -- restrictions --
 20 duties. (1) If the board appoints a hearing examiner to
 21 conduct any certification proceedings under this chapter,
 22 the hearing examiner may not be a member of the board or an
 23 employee of the department, or a member or employee of a
 24 ~~deli-authorized-state-air-and-water-quality-agency~~ THE
 25 ~~DEPARTMENT OF HEALTH OR BOARD OF HEALTH~~. A hearing examiner,

1 if any, shall be appointed by the board within 20 days after
 2 the department's report has been filed with the board. If a
 3 ~~deli-authorized-state-air-and-water-quality-agency~~ permit
 4 hearing is required ~~CONSUME~~ HEARING IS HELD HEARING IS
 5 HELD BEFORE THE BOARD OF HEALTH, the board and the agency
 6 BOARD OF HEALTH shall mutually agree on the appointment of a
 7 hearing examiner TO PRESIDE AT BOTH HEARINGS.

8 (2) A prehearing conference shall be held following
 9 notice within 60 days after the department's report has been
 10 filed with the board.

11 (3) The prehearing conference shall be organized and
 12 supervised by the hearing examiner.

13 (4) The prehearing conference shall be directed toward
 14 a determination of the issues presented by the application,
 15 the department's report, and an identification of the
 16 witnesses and documentary exhibits to be presented by the
 17 active parties who intend to participate in the hearing.

18 (5) The hearing examiner shall require the active
 19 parties to submit, in writing, and serve upon the other
 20 active parties, all direct testimony which they propose and
 21 any studies, investigations, reports, or other exhibits that
 22 any active party wishes the board to consider. These written
 23 exhibits and any documents that the board itself wishes to
 24 use or rely on shall be submitted and served in like manner,
 25 at least 20 days prior to the date set for the hearing, for

1 good cause shown, the hearing examiner may allow the
 2 introduction of new evidence at any time.

3 (6) THE HEARING EXAMINER SHALL ALLOW DISCOVERY WHICH
 4 SHALL BE COMPLETED BEFORE THE COMMENCEMENT OF THE HEARING,
 5 UPON GOOD CAUSE SHOWN AND UNDER SUCH OTHER CONDITIONS AS THE
 6 HEARING EXAMINER SHALL PRESCRIBE.

7 (7) Public witnesses and other interested public
 8 parties may appear and present oral testimony at the hearing
 9 or submit written testimony to the hearing examiner at the
 10 time of their appearance. These witnesses are subject to
 11 cross-examination.

12 (8) ALL PROCEEDINGS UNDER THIS CHAPTER ARE GOVERNED BY
 13 THE PROCEDURES SET FORTH IN THIS CHAPTER AND BY RULES
 14 ADOPTED BY THE BOARD. NO OTHER RULES OR PROCEDURE OR
 15 EVIDENCE SHALL APPLY EXCEPT THAT THE CONTESTED CASE
 16 PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT SHALL
 17 APPLY IF NOT IN CONFLICT WITH THE PROCEDURES SET FORTH IN
 18 THIS CHAPTER.

19 (9) The hearing examiner shall issue a prehearing
 20 order specifying the issues of fact and of law, identifying
 21 the witnesses of the active parties, naming the public
 22 witnesses and other interested parties who have submitted
 23 written testimony, scheduling times for the presentation of
 24 oral testimony by public parties, outlining the order in
 25 which the hearing shall proceed and establishing any other

1 special rules to expedite the hearing which the hearing
 2 examiner may adopt.

3 (10) THE HEARING EXAMINER SHALL ADOPT RULES DESIGNED TO
 4 EXCLUDE REPEITIVE, REDUNDANT, OR IRRELEVANT TESTIMONY AND
 5 SHALL ADOPT OTHER RULES OF EVIDENCE TO EXPEDITE AND INSURE
 6 AN ORDERLY PROCEEDING.

7 (11) (8) THE HEARING EXAMINER SHALL ISSUE A PREHEARING
 8 ORDER SPECIFYING THE ISSUES OF FACT AND OF LAW, IDENTIFYING
 9 THE WITNESSES OF THE ACTIVE PARTIES, NAMING THE PUBLIC
 10 WITNESSES AND OTHER INTERESTED PARTIES WHO HAVE SUBMITTED
 11 WRITTEN TESTIMONY IN LIEU OF APPEARANCE, OUTLINING THE ORDER
 12 IN WHICH THE HEARING SHALL PROCEED, SETTING FORTH THOSE
 13 SECTION 75-20-301 CRITERIA AS TO WHICH NO ISSUE OF FACT OR
 14 LAW HAS BEEN RAISED WHICH ARE TO BE CONCLUSIVELY PRESUMED
 15 AND ARE NOT SUBJECT TO FURTHER PROOF EXCEPT FOR GOOD CAUSE
 16 SHOWN, AND ANY OTHER SPECIAL RULES TO EXPEDITE THE HEARING
 17 WHICH THE HEARING EXAMINER SHALL ADOPT WITH THE APPROVAL OF
 18 THE BOARD.

19 (10) (9) At the conclusion of the hearing, the
 20 hearing examiner shall declare the hearing closed and shall
 21 within 90-60 days of that date, prepare and submit to the
 22 board and the duty authorized state air and water quality
 23 agency, if necessary, IN THE CASE OF A CONJUNCTIVE HEARING,
 24 WITHIN 90 DAYS TO THE BOARD AND THE BOARD OF HEALTH
 25 proposed findings of fact, conclusions of law, and a

March 22, 1979

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 883, third reading bill, be amended as follows:

1. Title, lines 6 and 7.

Following: "SECTIONS" on line 6

Strike: "75-2-211;"

Following: "75-20-218" on line 7

Insert: ", 75-20-220"

2. Page 2.

Following: line 15

Insert: "(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104."

Renumber: subsequent subsections

3. Page 3.

Following: line 19

Insert: "(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21."

Renumber: subsequent subsections

4. Page 5, lines 3 through 6.

Following: "energy," on line 3

Strike: remainder of line 3 through line 6

Insert: ":"

5. Page 6, lines 5 through 9.

Following: "(a) on line 5

Strike: remainder of line 5 through "information" on line 9

Insert: "An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board requires under applicable rules, containing the following information"

6. Page 6, line 20.

Strike: "and"

Insert: "(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and"

Renumber: subsequent subsection

7. Page 6, line 22.

Following: "board"

Insert: "and board of health"

Following: "department"

Insert: "and department of health"

8. Page 6, line 23.

Following: line 22

Strike: "requires"

Insert: "require"

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9. Page 7.

Strike: line 17 in its entirety

Renumber: subsequent subsections

10. Page 7.

Strike: line 24 in its entirety

11. Page 8, line 19 through line 17 on page 9.

Following: "75-20-213." on line 19 of page 8

Strike: remainder of line 19 through line 17 on page 9

Insert: "Supplemental material -- amendments.

(1) The applicant may, after an application is accepted, submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide detail with respect to an item described in general terms in the original application without filing a formal application for an amendment.

(2) (a) The board may approve a change in the location, design, or operation of a facility described in a certificate after it is issued if it is demonstrated by the applicant that such change:

(i) results from requests of landowners upon whose property the facility is or would be located;

(ii) results from requirements of other government agencies;

(iii) results from compliance with a condition in the certificate; or

(iv) would provide less environmental impact.

(b) Such change may be approved by the Board without a formal application for an amendment which approval may be given upon such terms, conditions, or modifications as the Board considers appropriate. The Board's approval shall be made after reasonable notice.

(3) A change in an application after it is accepted, or a change in a certificate after it is issued, other than as set forth in (1) and (2) of 75-20-213 shall require a formal application for an amendment, which shall be in such form and contain such information as the department by rule or order prescribes and be accompanied by a filing fee based on the estimated cost of reviewing the application for an amendment. The Board's decision on an application for an amendment shall be made following reasonable notice and shall be made within six months following receipt of such application which may be extended for good cause."

12. Page 10, line 7.

Following: "(1)"

Insert: "(a)"

13. Page 10, lines 10 through 12.

Following: "applications" on line 10

Strike: remainder of line 10 through "follows" on line 12

Insert: "as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility"

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14. Page 10, line 13.

Strike: "(a)"

Insert: "(i)"

Redesignate: subsequent subsections accordingly

15. Page 10.

Following: line 21.

Insert: "(b) A potential applicant may receive credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or National Environmental Policy Acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information; the department shall then evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter."

16. Page 10, line 22 through line 8 on page 11.

Following: "(2)(a)" on line 22

Strike: remainder of line 22 through line 8 on page 11

Insert: "The applicant may enter into a contract with the department for the development of information, provision of services and payment of fees and costs required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. The amount paid under any contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of subsections (2)(b) and (2)(d), the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(4) to carry out their responsibilities under this chapter. The department will retain the authority to amend a contract, upon good cause shown, to require additional payments for necessary expenses up to the limits set forth in subsections (1)(a) and (1)(b) above upon 30 days' notice." Renumber: subsequent subsection

17. Page 11, line 9.

Following: "If"

Strike: "an agreement"

Insert: "a contract"

Following: "entered"

Strike: "but"

18. Page 11, lines 10 and 11.

Following: line 9

Strike: "desires to" on line 10

Insert: "must"

Following: "installments" on line 10

Strike: remainder of line 10 through "fee" on line 11

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19. Page 12, lines 13 through 16.

Following: "fees" on line 13

Strike: remainder of line 13 through "proceedings" on line 16

20. Page 12, line 20.

Following: "department"

Insert: "and department of health"

21. Page 13, line 2.

Following: "department"

Insert: "and department of health"

22. Page 13, lines 5 through 11.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

23. Page 13, line 16.

Following: line 15

Strike: "the"

Insert: "applicable"

24. Page 13, line 16.

Following: "75-20-503"

Insert: "and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3)"

25. Page 13, line 17.

Following: "department"

Insert: "and department of health"

Following: "extent"

Strike: "it considers"

Insert: "they consider"

26. Page 13.

Following: line 19

Insert: "(3) The department of health shall within one year following the date of acceptance of an application, and the board of health, if applicable, within an additional six months, shall issue any decision, opinion, order, certification or permit required by state or federal air and water quality laws and this chapter. The department of health and the board of health shall consider air and water quality impacts and compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and for the purposes of this chapter as specified in

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75-20-503(3) and (4) where applicable; the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit and the environmental impact statement, if any, by the department of health or board of health shall be served upon the department and the board and shall be utilized as part of their final site selection process. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health."
Renumber: subsequent subsections

27. Page 13, line 20.
Following: "within"
Strike: "2 years"
Insert: "18 months"

28. Page 14, lines 11 and 12.
Following: "of" on line 11
Strike: "health and environmental sciences,"

29. Page 15, lines 9 and 10.
Following: "(2)"
Strike: "If the"
Insert: "The"
Following: "department" on line 9
Strike: remainder of line 9 through "it" on line 10

30. Page 15, line 19.
Following: "hearing."
Strike: "The"
Insert: "In such a conjunctive hearing the"

31. Page 15, line 25 through line 1 on page 17.
Strike: Section 10 in its entirety
Renumber: subsequent sections

32. Page 17, lines 8 and 9.
Following: "or employee of" on line 8
Strike: "a duly authorized state air and water quality agency"
Insert: "the department of health or board of health"

33. Page 17, lines 12 and 13.
Following: "a" on line 12
Strike: "duly authorized state air and water quality agency
permit hearing is required"
Insert: "conjunctive hearing is held"

34. Page 17, line 14.
Following: line 13
Strike: "agency"
Insert: "board of health"

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35. Page 18.
Following: line 10
Insert: "(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe."
Renumber: subsequent subsections

36. Page 18.
Following: line 15
Insert: "(8) All proceedings under this chapter are governed by the procedures set forth in this chapter and by rules adopted by the board. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter."

37. Page 18, lines 16 through 24.
Strike: subsection (7) in its entirety
Insert: "(9) The hearing examiner shall adopt rules designed to exclude repetitive, redundant, or irrelevant testimony and shall adopt other rules of evidence to expedite and insure an orderly proceeding.

(10) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board."

Renumber: subsequent subsections

38. Page 19, line 2.
Following: line 1
Strike: "90"
Insert: "60"

39. Page 19, line 3.
Following: line 2
Strike: "the duly authorized state air and water quality agency,
if necessary"
Insert: "in the case of a conjunctive hearing, within 90 days to the board and the board of health"

40. Page 19, line 11.
Following: "exceed"
Strike: "12"
Insert: "9"

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41. Page 19.
Following: line 12
Insert: "(13) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections 2 through 10 of this section to expedite the hearing for facility defined in subsections (3)(b) and (3)(c) of 75-20-104."

42. Page 19, line 16.
Following: "waiver"
Strike: "-- attorney general"

43. Page 19, line 25.
Following: "organization"
Insert: "interested in and affected by the application and which is"

44. Page 20, lines 7 and 8.
Following: "person" on line 7
Strike: remainder of line 7 through "proceeding" on line 8
Insert: "affected by the application"

45. Page 20.
Strike: lines 9 and 10 in their entirety

46. Page 20, lines 19 through 25.
Strike: subsections (4) and (5) in their entirety

47. Page 21.
Strike: lines 12 through 17 in their entirety

48. Page 23, lines 14 through 20.
Following: "(h)" on line 14
Strike: remainder of line 14 through line 20
Insert: "that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(4)."

49. Page 24, lines 11 through 24.
Strike: subsection (5) in its entirety

50. Page 26, lines 21 and 22.
Following: "authority" on line 21
Strike: remainder of line 21 through "provided," on line 22

51. Page 27, line 8.
Following: "and"
Strike: "state air and water quality agencies"
Insert: "department of health, and the board of health"

52. Page 36, line 16 through line 22 on page 38.
Strike: section 23 in its entirety

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53. Page 39, line 18.
Following: "court"
Strike: "may"
Insert: "must"

54. Page 39, line 21.
Following: "board"
Insert: "; except that the cost of the bond is not chargeable to the applicant as part of the fee"

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75-20-503(3) and (4) where applicable; the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit and the environmental impact statement, if any, by the department of health or board of health shall be served upon the department and the board and shall be utilized as part of their final site selection process. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health."

Renumber: subsequent subsections

27. Page 13, line 20.
Following: "within"
Strike: "2 years"
Insert: "18 months"

28. Page 14, lines 11 and 12.
Following: "of" on line 11
Strike: "health and environmental sciences,"

29. Page 15, lines 9 and 10.
Following: "(2)"
Strike: "If the"
Insert: "The"
Following: "department" on line 9
Strike: remainder of line 9 through "it" on line 10

30. Page 15, line 19.
Following: "hearing."
Strike: "The"
Insert: "In such a conjunctive hearing the"

31. Page 15, line 25 through line 1 on page 17.
Strike: Section 10 in its entirety
Renumber: subsequent sections

32. Page 17, lines 8 and 9.
Following: "or employee of" on line 8
Strike: "a duly authorized state air and water quality agency"
Insert: "the department of health or board of health"

33. Page 17, lines 12 and 13.
Following: "a" on line 12
Strike: "duly authorized state air and water quality agency
permit hearing is required"
Insert: "conjunctive hearing is held"

34. Page 17, line 14.
Following: line 13
Strike: "agency"
Insert: "board of health"

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35. Page 18.
Following: line 10
Insert: "(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe."
Renumber: subsequent subsections

36. Page 18.
Following: line 15
Insert: "(8) All proceedings under this chapter are governed by the procedures set forth in this chapter and by rules adopted by the board. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter."

37. Page 18, lines 16 through 24.
Strike: subsection (7) in its entirety
Insert: "(9) The hearing examiner shall adopt rules designed to exclude repetitive, redundant, or irrelevant testimony and shall adopt other rules of evidence to expedite and insure an orderly proceeding.

(10) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board."

Renumber: subsequent subsections

38. Page 19, line 2.
Following: line 1
Strike: "90"
Insert: "60"

39. Page 19, line 3.
Following: line 2
Strike: "the duly authorized state air and water quality agency, if necessary"
Insert: "in the case of a conjunctive hearing, within 90 days to the board and the board of health"

40. Page 19, line 11.
Following: "exceed"
Strike: "12"
Insert: "9"

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41. Page 19.
Following: line 12
Insert: "(13) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections 2 through 10 of this section to expedite the hearing for facility defined in subsections (3)(b) and (3)(c) of 75-20-104."

42. Page 19, line 16.
Following: "waiver"
Strike: "-- attorney general"

43. Page 19, line 25.
Following: "organization"
Insert: "interested in and affected by the application and which is"

44. Page 20, lines 7 and 8.
Following: "person" on line 7
Strike: remainder of line 7 through "proceeding" on line 8
Insert: "affected by the application"

45. Page 20.
Strike: lines 9 and 10 in their entirety

46. Page 20, lines 19 through 25.
Strike: subsections (4) and (5) in their entirety

47. Page 21.
Strike: lines 12 through 17 in their entirety

48. Page 23, lines 14 through 20.
Following: "(b)" on line 14
Strike: remainder of line 14 through line 20
Insert: "that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(4)."

49. Page 24, lines 11 through 24.
Strike: subsection (5) in its entirety

50. Page 26, lines 21 and 22.
Following: "authority" on line 21
Strike: remainder of line 21 through "provided," on line 22

51. Page 27, line 8.
Following: "and"
Strike: "state air and water quality agencies"
Insert: "department of health, and the board of health"

52. Page 36, line 16 through line 22 on page 38.
Strike: section 23 in its entirety

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53. Page 39, line 18.
Following: "court"
Strike: "may"
Insert: "must"

54. Page 39, line 21.
Following: "board"
Insert: "; except that the cost of the bond is not chargeable to the applicant as part of the fee"

March 24, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 883, third reading bill, be amended as follows:

1. That Amendment No. 26 read as follows:

26. Page 13.

Following: line 19

Insert: "(3) The department of health shall within one year following the date of acceptance of an application, and the board of health, if applicable, within an additional six months, shall issue any decision, opinion, order, certification or permit required by state or federal air and water quality laws and this chapter. The department of health and the board of health shall consider air and water quality impacts and compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and for the purposes of this chapter as specified in 75-20-503(3) and (4) where applicable; the decision, opinion, order, certification or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit and the environmental impact statement, if any, by the department of health or board of health shall be served upon the department and the board and shall be utilized as part of their final site selection process. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health."

Renumber: subsequent subsections