

CHAPTER NO. 676

HOUSE BILL NO. 883

INTRODUCED BY BARDANOUE, 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 concurrent 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. Concurrent 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 Com-  
mittee appointed.

April 17, 1979

Free Joint Conference Com-  
mittee reported.

April 18, 1979

Second reading, adopted.

Third reading, adopted.

Adopted by second house.

April 19, 1979

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *883*  
 2 INTRODUCED BY *Boulanger 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 75-20-1105,  
 11 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 20 control and the other law or rule shall be deemed superseded  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)(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 ~~(3)(4)~~ "Board" means the board of natural resources  
 15 and conservation provided for in 2-15-3302.  
 16 ~~(4)(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 ~~(5)(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 (1),  
14 including upgrading to a design capacity covered by  
15 subsection (1)(b), except that the term does not include  
16 normal maintenance or repair of an existing facility.

17 (6)(11) "Department" means the department of natural  
18 resources and conservation provided for in Title 2, chapter  
19 15, part 33.

20 (7)(11) "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 (7)  
25 (1)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the 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.

(e) any underground in situ gasification of coal.

~~(8) "Municipality" means any county or municipality within this state;~~

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

(10) "Transmission substation" means any structure, device, 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.

~~(10)(11)~~ "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each municipality and the head of each government agency county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is to ~~may~~ be located, both as primarily and as alternatively proposed and on the following state government agencies:

(a) environmental quality council;

(b) department of health and environmental sciences;

(c) department of public service regulation;

(d) department of fish and game;

(e) department of state lands;

(f) department of community affairs;

(g) department of highways;

(h) department of revenue;

(i) the attorney general.

(4) The copy of the application shall be accompanied

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

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the ~~municipalities entitled to receive notice under subsection (3) of this section by the publication of a summary of the application and the date on or about which it is to be filed in those newspapers as will serve substantially to inform those persons of the application area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.~~

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

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

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

(2) ~~If an amendment to an original application would~~

~~result in a substantial change of the original application.~~  
 An application for an amendment of an application is required if the department determines that there is a substantial change in the location, design, or operation of all or a portion of the facility other than as provided in the alternates set forth in the original application. Such an amendment shall be considered as a new application and a new filing fee shall be required.

~~(3) If the department determines that a proposed change in the location, design, or operation of a proposed facility results from the requirements of other government agencies and would result in less environmental impact, an application for an amendment is required. However, if the proposed change is such that it prevents the department from carrying out its duties and responsibilities under this chapter, the department shall require a new application and filing fees.~~

Section 6. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(7) 75-20-104(8) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative

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

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

"75-20-215. Filing fee -- accountability -- refund -- use. (1) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee with the application, based upon the estimated cost of the facility according to the declining scale which follows:

(a) 2% of any estimated cost up to \$1 million; plus

(b) 1% of any estimated cost over \$1 million and up to \$20 million; plus

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

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

(e) .125% of any amount of estimated cost over \$300 million.

~~(2) (a) The total filing fee shall be submitted to the department upon submission of an application unless the applicant and the department have previously agreed to a 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 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 (3) 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 (2)(4) 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 (3)(5) 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)(6) 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 75-20-104(7)(b) and (c) or not to exceed 10 years after the  
12 certificate is issued for facilities defined in  
13 75-20-104(7)(d), (e), and (f), except that a minimum of 2%  
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†† 75-20-104(8) and for a facility as defined in~~  
 23 ~~(b) and (c) of 75-20-104†† 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†† 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 ~~final~~ 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, 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

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

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

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

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

read:

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

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

(3) A decision made by the board pursuant to 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

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 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 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 ~~montepetty~~ ~~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 montepetty~~ 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)~~  
 16 ~~of subsection (1) waives his the right to be a party if he~~  
 17 ~~the party does not participate orally or in the hearing~~  
 18 ~~before the board.~~

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

22 (5) ~~The attorney general shall be the representative~~  
 23 ~~of the public interest on all matters raised in the hearings~~  
 24 ~~related to the criteria established in 75-20-301 and~~  
 25 ~~75-20-501."~~

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 75-20-220, 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 parts, 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

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

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

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

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

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

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

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

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

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

(e) any other factors that it considers relevant.

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

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

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. ~~(1) 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 ~~filed before January 1, 1975. Applications for certificates~~  
16 ~~under this subsection must be promptly filed.~~

17 ~~(2)~~ (1) 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 ~~(3)~~ (2) 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

standards.

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

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

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

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

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

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

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

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

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

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

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

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

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 ~~(9) 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 Bauman & 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 75-20-1105,  
 11 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 (3) (1) "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) (4) "Board" means the board of natural resources  
 15 and conservation provided for in 2-15-3302.

16 (4) (2) "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 (5) (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 ~~(7)~~ (8),  
14 including upgrading to a design capacity covered by  
15 subsection ~~(7)~~ (8)(b), except that the term does not include  
16 normal maintenance or repair of an existing facility.

17 ~~(6)~~(1) "Department" means the department of natural  
18 resources and conservation provided for in Title 2, chapter  
19 15, part 33.

20 ~~(7)~~(1) "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 ~~(7)~~  
25 (8)(a) of this section;



(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the 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.

(e) any underground in situ gasification of coal.

~~†8†--"Municipality"--means--any--county--or--municipality within this state.~~

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

(10) "Transmission substation" means any structure, device, 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.

~~†10†(11)~~ "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each municipality and the head of each government agency county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is to be located, both as primarily and as alternatively proposed, and on the following state government agencies:

- (a) environmental quality council;
- (b) department of health and environmental sciences;
- (c) department of public service regulation;
- (d) department of fish and game;
- (e) department of state lands;
- (f) department of community affairs;
- (g) department of highways;
- (h) department of revenue;
- (i) the attorney general.

(4) The copy of the application shall be accompanied

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

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the municipalities entitled to receive notice under subsection (3) of this section by the publication of a summary of the application and the date on or about which it is to be filed in those newspapers as will serve substantially to inform those persons of the application, area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

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

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

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

(2) If an amendment to an original application would

~~result-in-a-substantial-change-of-the-original-application.~~  
 An application for an amendment of an application is required if the department determines that there is a substantial change in the location, design, or operation of all or a portion of the facility other than as provided in the alternates set forth in the original application, such

Such an amendment shall be considered as a new application and a new filing fee shall be required.

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

Section 6. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(7); 75-20-104(8) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative

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

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

"75-20-215. Filing fee -- accountability -- refund -- use. (1) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee with the application based upon the estimated cost of the facility according to the declining scale which follows:

(a) 2% of any estimated cost up to \$1 million; plus

(b) 1% of any estimated cost over \$1 million and up to \$20 million; plus

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

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

(e) .125% of any amount of estimated cost over \$300 million.

(2) ~~(a) The total filing fee shall be submitted to the department upon submission of an application unless the applicant and the department have previously agreed to a 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 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 (3) 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 (2)(4) 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 (3)(2) 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)(6) 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 75-20-104(7)(b) and (c) or not to exceed 10 years after the  
 12 certificate is issued for facilities defined in  
 13 75-20-104(7)(c), (d), and (e), except that a minimum of 2%  
 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 ~~(1)(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 ~~(2)(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 ~~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)(5) 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

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

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

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

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

read:

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

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

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

under the Montana Administrative Procedure Act."

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

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

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

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

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

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

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

(7) 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, scheduling times for the presentation of ~~oral testimony by public parties, outlining the order in~~ which the hearing shall proceed, and establishing any other ~~special rules to expedite the hearing which the hearing~~ examiner may adopt.

(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 municipal 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 municipal entity 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)~~  
 16 ~~of subsection (1) waives his the right to be a party if he~~  
 17 ~~the party does not participate orally at in the hearing~~  
 18 ~~before the board.~~

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

22 (5) The attorney general shall be the representative  
 23 of the public interest on all matters raised in the hearings  
 24 related to the criteria established in 75-20-301 and  
 25 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 evidences  
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 75-20-220, 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 examiners, 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

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

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

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

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

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

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

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

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

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

(e) any other factors that it considers relevant.

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

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

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. ~~{1}--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 ~~filed--before--January--1,--1975--Applications--for--certificates~~  
16 ~~under--this--subsection--must--be--promptly--filed.~~

17 {2}{11} 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 {3}{12} 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

standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

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

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

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

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

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

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land 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;

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 (9) 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                   STATEMENT OF INTENT RE:  HB 883

2  
3  
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

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

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

Section 1. Section 75-20-103, MCA, is amended to read:

"75-20-103. Chapter supersedes other laws or rules.

This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect."

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

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

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

~~(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.~~

~~(2)(3)~~ "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

~~(3)(4)~~ "Board" means the board of natural resources and conservation provided for in 2-15-3302.

~~(5) "BOARD OF HEALTH" MEANS THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES PROVIDED FOR IN 2-15-2104.~~

~~(4)(5)(6)~~ "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(5)(6)(7)~~ "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site 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 ~~(7)~~ (8),  
16 including upgrading to a design capacity covered by  
17 subsection ~~(7)~~ (8)(b), except that the term does not include  
18 normal maintenance or repair of an existing facility.

19 ~~(6)~~~~(7)~~(8) "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 ~~(7)~~~~(8)~~(10) "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;

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

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the 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.~~

(e) any underground in situ gasification of coal.

~~††~~--"Municipality"--means any county or municipality within this state.

~~†††(11)~~ "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~†††(12)~~ "Transmission substation" means any structure, device, 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.

~~†††††(13)~~ "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or

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

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

"75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the department board, to a person who agrees to comply with the terms, conditions, and modifications contained therein."

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

"75-20-211. Application -- filing and contents -- 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:

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

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

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

(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 and

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

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

10 ~~(v)(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 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 ~~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 ~~(b) department of health and environmental sciences;~~  
8 ~~(c) department of public service regulation;~~  
9 ~~(d) department of fish and game;~~  
10 ~~(e) department of state lands;~~  
11 ~~(f) department of community affairs;~~  
12 ~~(g) department of highways;~~  
13 ~~(h) department of revenue;~~  
14 ~~(i) 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--filed--in--these--newspapers--as--will--serve~~  
24 ~~substantially to inform those 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 {3}, {4}, and {5}~~  
 15 ~~of 75-20-211.~~

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 fee. (1) THE APPLICANT MAY, AFTER AN APPLICATION IS~~  
 9 ~~ACCEPTED, SUBMIT SUPPLEMENTAL MATERIAL IN A TIMELY MANNER AS~~  
 10 ~~REQUESTED BY THE DEPARTMENT OR AS DEFERRED 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 ~~(I) RESULTS FROM REQUESTS OF LANDOWNERS UPON WHOSE~~  
 19 ~~PROPERTY THE FACILITY IS OR WOULD BE LOCATED;~~

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

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

24 ~~(IV) WOULD PROVIDE LESS ENVIRONMENTAL IMPACT.~~

25 ~~(B) 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(7)~~ 75-20-104(8) 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)(i)~~ 2% of any estimated cost up to \$1 million; plus  
 16 ~~(b)(iii)~~ 1% of any estimated cost over \$1 million and up  
 17 to \$20 million; plus

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

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

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

24 (B) 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 submission 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 duly authorized state~~  
 22 ~~air and water quality agencies, the agencies listed in~~  
 23 ~~75-20-216(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 A CONTRACT is not entered but~~  
 16 ~~the applicant desires to MUST 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 ~~(2)(4) If an application consists of a combination of~~

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

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

~~{4}{6}~~ The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter with respect to the facility covered by the certificate for a period not to exceed 5 years after the certificate is issued for facilities defined in 75-20-104(7)(b) and (c) or not to exceed 10 years after the certificate is issued for facilities defined in 75-20-104(7)(a) ~~and (d) and (e) except that a minimum of 25~~ of the revenues derived shall be allocated to the attorney general by the department if he becomes an active party to the certification proceedings."

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

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt

of an application, the department AND DEPARTMENT OF HEALTH shall within 30 days notify the applicant in writing that:

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

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

~~{2} if an application is accepted as complete within 60 days of the original receipt by the department under subsection (1)(a), the application's effective filing and receipt date relates back to the original date the application was filed; in all other cases the effective filing and receipt date is the date on which the department accepts the application as complete.~~

~~{1}{3}{2}~~ Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all the APPLICABLE criteria listed in 75-20-301 and 75-20-503 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

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 (2)(4) 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(7) 75-20-104(8) and for a facility  
 15 as defined in (b) and (c) of 75-20-104(7) 75-20-104(8) 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(7)  
 18 75-20-104(8) 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--final 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 ~~(3)(5)~~ The departments of health--end--environmental  
5 sciences, 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(7) 75-20-104(8),  
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 IDH 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. 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 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. (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 alternatives set forth in the  
4 application.

5 ~~(2) 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, 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 ~~(3) 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 10. Section 75-20-220, MCA, is amended to  
21 read:

22 "75-20-220. Hearing examiner -- restrictions --  
23 duties. (1) 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 a

1 employee of the department, or a member or employee of a  
2 ~~duly 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 ~~duly 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 (2) 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 (3) The prehearing conference shall be organized and  
14 supervised by the hearing examiner.

15 (4) 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 (5) 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 (9) The hearing examiner shall issue a prehearing  
22 order specifying the issues of fact and of law, identifying  
23 the witnesses of the active parties, naming the public  
24 witnesses and other interested parties who have submitted  
25 written testimony, scheduling times for the presentation of

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 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

of facts, conclusions of law, and a recommended decision.

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

(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."

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

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

(a) the applicant;

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

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

(d) any nonprofit organization INTERESTED IN AND AFFECTED BY THE APPLICATION AND WHICH IS formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located; or

(e) any other interested person who--establishes--an interest-in-the-proceeding AFFECTED BY THE APPLICATION, and (f)--the-department--and (g)--the-attorney-general

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

(3) Any party identified in (b), (c), (d), and (e) of subsection (1) waives his the right to be a party if he the party does not participate orally or in the hearing before the board.

(4) The attorney-general shall participate as an active party in certification proceedings involving facilities described in 75-20-104(1)(a).

(5) The attorney-general shall be the representative of the public interest on all matters raised in the hearings



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

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 ~~(3) Except as expressly modified in 75-20-220, the the~~  
15 ~~contested case procedures of the Montana Administrative~~  
16 ~~Procedure Act shall apply to the hearings 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 ~~(4) (3)~~ 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 ~~test~~ 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 federal 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 75-20-216(4).~~

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 ~~15. If the duty authorized state air and water quality~~  
16 ~~agency is required to hold a hearing, the agency shall~~  
17 ~~within 15 days after submission of the recommended decision~~  
18 ~~by the hearing examiner make complete findings, issue 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 area~~  
 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  
 16 proceedings. ~~Any of the provisions described in~~  
 17 ~~75-20-216 through 75-20-222 and this part may be waived by~~  
 18 ~~the board for good cause shown with respect to applications~~  
 19 ~~filed before January 1, 1975. Applications for certificates~~  
 20 ~~under this subsection must be promptly filed.~~

21 ~~Any of the provisions described in~~ The board may waive compliance with any of the  
 22 provisions of 75-20-216 through 75-20-222, ~~75-20-501a~~ and  
 23 this part if the applicant makes a clear and convincing  
 24 showing to the board at a public hearing that an immediate,  
 25 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, ~~75-20-501a~~ and this part.

4 ~~Any of the provisions described in~~ The board may waive compliance with any of the  
 5 provisions of this chapter upon receipt of notice by a  
 6 utility or person subject to this chapter that a facility or  
 7 associated facility has been damaged or destroyed as a  
 8 result of fire, flood, or other natural disaster or as the  
 9 result of insurrection, war, or other civil disorder and  
 10 there exists an immediate need for construction of a new  
 11 facility or associated facility or the relocation of a  
 12 previously existing facility or associated facility in order  
 13 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  
 17 governmental agencies not permitted after issuance of  
 18 certificate -- exceptions. (1) Notwithstanding any other  
 19 law, no state or regional agency or municipality or other  
 20 local government may require any approval, consent, permit,  
 21 certificate, or other condition for the construction,  
 22 operation, or maintenance of a facility authorized by a  
 23 certificate issued pursuant to this chapter, except that the  
 24 state air and water quality agency or agencies shall retain  
 25 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 department,  
 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

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

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

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

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

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

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

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

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

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

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

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

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

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

(g) research activities of the utility of new 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 plans;

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,

10 population attracted by construction or operation of the

11 facility itself;

12 (f) impact of availability of energy from this

13 facility on growth patterns and population dispersal;

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

15 (h) seismologic characteristics;

16 (i) construction practices;

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

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

19 facility;

20 (k) corridor design and construction precautions for

21 transmission lines or aqueducts;

22 (l) scenic impacts;

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

24 (n) impacts on important historic architectural,

25 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,

16 chemical, biological, and radiological characteristics;

17 (e) hydrologic studies of effects of effluents on

18 receiving waters, including mixing characteristics of

19 receiving waters, changed evaporation due to temperature

20 differentials, and effect of discharge on bottom sediments;

21 (f) relationship to water quality standards;

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

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

24 uses;

25 (h) relationship to projected uses;

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 liquid, radioactive, and gaseous wastes;  
 10 (c) analyses and studies of the adequacy of  
 11 engineering safeguards and operating procedures;  
 12 (d) monitoring--adequacy of devices and sampling  
 13 techniques;  
 14 (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-75-2-211-MCA-is-amended-to-read:  
 21 "75-2-211--Permits--for--construction--installation  
 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--180--days--before--construction--begins



1 of--any--machine--equipment--device--or--facility--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--alterations--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--shown--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--filed--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--filing--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--filed--as--of--the  
 23 date--of--the--purported--filing.

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--180--days--of--the  
 3 receipt--of--a--filed--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 filed--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--severally--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--therefor--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--filing--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--75-20-104--an  
 25 application--for--a--permit--under--this--chapter--must--be--filed--so

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 ~~MUST~~ 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. Repealer. Sections 75-20-1101 through  
11 75-20-1105, MCA, are repealed.

-End-

## HOUSE BILL NO. 883

INTRODUCED BY BARDANOUVE, SCULLY

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

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

Section 1. Section 75-20-103, MCA, is amended to read:

"75-20-103. Chapter supersedes other laws or rules.

This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect."

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

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

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

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

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

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

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

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

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site 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 ~~(7)~~ (8),  
16 including upgrading to a design capacity covered by  
17 subsection ~~(7)~~ (8)(b), except that the term does not include  
18 normal maintenance or repair of an existing facility.

19 ~~(6)(7)(8)~~ "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 ~~(7)(8)(10)~~ "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 ~~††~~  
5 ~~††(10)~~(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~~  
9 ~~capable of producing geothermally derived power equivalent~~  
10 ~~to 25 million Btu per hour or more or any addition thereto~~  
11 ~~having an estimated cost in excess of \$250,000.~~

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

13 ~~††--"Municipality"--means any county or municipality~~  
14 ~~within this state.~~

15 ~~††(11)~~ "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 ~~††(12)~~ "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 ~~††(13)~~ "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~~  
11 ~~certificate shall file with the department a verified and~~  
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 and

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

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

10 ~~(v)(VII)~~ 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 commissioner, 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~~ 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 ~~(b) department of health and environmental sciences;~~  
 8 ~~(c) department of public service regulation;~~  
 9 ~~(d) department of fish and game;~~  
 10 ~~(e) department of state lands;~~  
 11 ~~(f) department of community affairs;~~  
 12 ~~(g) department of highways;~~  
 13 ~~(h) department of revenue;~~  
 14 ~~(i) 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--filed--in--those--newspapers--as--will--serve~~  
 24 ~~substantially to inform those 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 (3), (4), and (5)  
 15 of 75-20-211.

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 fee. (1) THE APPLICANT MAY, AFTER AN APPLICATION IS~~  
 9 ~~ACCEPTED, SUBMIT 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 ~~(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 ~~(i) RESULTS FROM REQUESTS OF LANDOWNERS UPON WHOSE~~  
 19 ~~PROPERTY THE FACILITY IS OR WOULD BE LOCATED;~~

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

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

24 ~~(iv) WOULD PROVIDE LESS ENVIRONMENTAL IMPACT;~~

25 ~~(B) 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 (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. (1) AN~~  
 16 ~~APPLICATION FOR AN AMENDMENT OF AN APPLICATION OR A~~  
 17 ~~CERTIFICATE SHALL BE IN SUCH FORM AND CONTAIN SUCH~~  
 18 ~~INFORMATION AS THE BOARD BY RULE OR THE DEPARTMENT BY ORDER~~  
 19 ~~PRESCRIBES. NOTICE OF SUCH AN APPLICATION SHALL BE GIVEN AS~~  
 20 ~~SET FORTH IN (3), (4), AND (5) OF 75-20-211.~~

21 ~~(2) 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 ~~DEFERRED 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 ~~(a)~~ (I) 2% of any estimated cost up to \$1 million; plus  
 13 ~~(b)~~ (II) 1% of any estimated cost over \$1 million and up  
 14 to \$20 million; plus  
 15 ~~(c)~~ (III) 0.5% of any estimated cost over \$20 million  
 16 and up to \$100 million; plus  
 17 ~~(d)~~ (IV) 0.25% of any amount of estimated cost over \$100  
 18 million and up to \$300 million; plus  
 19 ~~(e)~~ (V) .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 ~~(b) 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 ~~75-20-216, 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 75-20-106.~~  
 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)(D) 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 75-20-216(4)~~  
 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 ~~(c)(B) If an agreement A CONTRACT is not entered INTO,~~  
 19 ~~but the applicant desires to MMSI 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 ~~filing fee.~~

3 ~~(2)(4) 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 ~~(3)(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 ~~(4)(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."~~

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

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department AND DEPARTMENT OF HEALTH shall within 30 90 days notify the applicant in writing that:

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

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

~~12) If an application is accepted as complete within 90 days of the original receipt by the department under subsection 11, the application is effective filing and receipt date relates back to the original date the application was filed. In all other cases, the effective filing and receipt date is the date on which the department accepts the application as complete.~~

12) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all

the APPLICABLE criteria listed in 75-20-301 and 75-20-503 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). The department AND DEPARTMENT OF HEALTH shall use, to the extent it considers THEY CONSIDER applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) THE DEPARTMENT OF HEALTH SHALL WITHIN 1 YEAR FOLLOWING THE DATE OF ACCEPTANCE OF AN APPLICATION, AND THE BOARD OF HEALTH, IF APPLICABLE, WITHIN AN ADDITIONAL 6 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 DETERMINE 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

1 ~~ANY OF THE CRITERIA SPECIFIED IN 75-20-503(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 ~~(2)(4) Within 2 years or 22 MONTHS following receipt~~  
 25 ~~acceptance of an application for a facility as defined in~~

1 (a) and (d) of 75-20-104(7) ~~75-20-104(8)~~ 75-20-104(10) and  
 2 for a facility as defined in (b) and (c) of 75-20-104(7)  
 3 ~~75-20-104(8)~~ 75-20-104(10) 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(7) ~~75-20-104(8)~~ 75-20-104(10) 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 ~~final 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 ~~(3)(5) The departments of health--and--environmental~~  
 17 ~~science, highways, community affairs, fish and game, state~~  
 18 ~~lands, revenue, 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 75-20-104(7) ~~75-20-104(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 ~~(2) 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 ~~(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. 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 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. (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 application.

5 ~~(2) 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, 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 ~~(3) 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. (1)  
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 CONJUNCTIVE 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 (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 (8) 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 OF 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 (9) 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 (9) 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 ORDERLY PROCEEDING.

6 (10) 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 (11) 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 ~~191121(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 12 9 calendar months unless  
 7 extended by the board for good cause.

8 ~~1131(11)~~ THE BOARD OR HEARING EXAMINER MAY WAIVE ALL OR  
 9 A PORTION OF THE PROCEDURES SET FORTH IN SUBSECTIONS (2)  
 10 THROUGH ~~1101~~ (8) OF THIS SECTION TO EXPEDITE THE HEARING FOR  
 11 FACILITY ~~---DEFINED IN SUBSECTIONS 1111B) AND 1111E) OF~~  
 12 ~~75-20-104~~ 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 ~~(f) the department and~~  
 17 ~~(g) the attorney-general~~

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 ~~121131~~ 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 ~~121131(4)~~ Any party identified in (b), (c), (d), and

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

~~(4) The attorney general shall participate as an active party in certification proceedings involving facilities described in 75-20-104(f)(1).~~

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

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

"75-20-222. Record of hearing -- procedure -- rules of 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.

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

~~(3) Except as expressly modified in 75-20-220, the the contested case procedures of the Montana Administrative Procedure Act shall apply to the hearing, except that neither common law nor statutory rules of evidence need~~

~~apply. The board may make rules designed to exclude repetitive, redundant or irrelevant testimony.~~

~~(4)(3)~~ 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.

(4) ALL PROCEEDINGS UNDER THIS CHAPTER ARE GOVERNED BY THE PROCEDURES SET FORTH IN THIS CHAPTER, THE PROCEDURAL RULES ADOPTED BY THE BOARD, AND THE MONTANA RULES OF EVIDENCE UNLESS ONE OR MORE RULES OF EVIDENCE ARE WAIVED BY THE HEARING EXAMINER UPON A SHOWING OF GOOD CAUSE BY ONE OR MORE OF THE PARTIES TO THE HEARING. 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 OR THE PROCEDURAL RULES ADOPTED BY THE BOARD."

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

"75-20-301. Decision of board -- findings necessary for certification. (1) Within 90 ~~60~~ days after the ~~last~~ day of the hearing, submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the 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 ~~violate---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(1),  
19 75-20-216(3).

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 (4) 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 ~~(5) If the duly authorized state air and water quality~~  
11 ~~agency is required to hold a hearing, the agency shall~~  
12 ~~within 45 days after submission of the recommended decision~~  
13 ~~by the hearing examiner, make complete findings, issue an~~  
14 ~~opinion, and render a decision upon the record, 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 duly~~  
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 municipalities 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)(1)~~ 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)(2)~~ 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  
 3 result of fire, flood, or other natural disaster or as the  
 4 result of insurrection, war, or other civil disorder and  
 5 there exists an immediate need for construction of a new  
 6 facility or associated facility or the relocation of a  
 7 previously existing facility or associated facility in order  
 8 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 ~~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.

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

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

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

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

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

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

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

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

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

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

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

"75-20-501. Annual long-range plan submitted -- contents -- available to public. (1) Each utility and each person contemplating the construction of a facility within 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 (1) 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."

16 Section-23--Section-75-2-211-NEA--is-amended-to-read:  
 17 "75-2-211--Permits--for--construction--installation  
 18 alteration--or--use--(1)--The-department-shall-provide-for  
 19 the-issuance--suspension--revocation--and-renewal--of--a  
 20 permit-issued-under-this-section.  
 21 (2)--Not-later-than-180-days-before-construction-begins  
 22 of--any--machine--equipment--device--or--facility--which--the  
 23 board-finds-may-directly-or-indirectly-cause--or--contribute  
 24 to--air-pollution--or--which-is-intended-primarily-to-prevent  
 25 or-control-the-emission-of-air-pollutants-and-not-later-than

1 180-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-filing-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-filed-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-filing-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-filed-as-of-the  
 19 date-of-the-purported-filing.  
 20 (6)--Where-an-application-for--a--permit--requires--the  
 21 completion--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-filed-application--as--defined--in--subsection  
 25 (5)--of-the-approval-or-denial-of-the-application. However

1 where an application does not require the completion of an  
 2 environmental impact statement, the department shall notify  
 3 the applicant in writing within 60 days of the receipt of a  
 4 filed application, as defined in subsection (5), of the  
 5 approval or denial of the application.

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

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

20 (9) For a facility defined in 35-29-104, an  
 21 application for a permit under this chapter must be filed as  
 22 to insure coordination and compliance with the provisions  
 23 of Title 35, Chapter 29, and this chapter.

24 NEW SECTION. Section 24. Order not stayed by appeal  
 25 -- 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 MAY 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 FEE. 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 29 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-

## HOUSE BILL NO. 883

INTRODUCED BY BARDANOUVE, SCULLY

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

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

Section 1. Section 75-20-103, MCA, is amended to read:

"75-20-103. Chapter supersedes other laws or rules.

This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect."

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

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

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

~~(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.~~

~~(2)(3)~~ "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

~~(3)(4)~~ "Board" means the board of natural resources and conservation provided for in 2-15-3302.

~~(5) "BOARD OF HEALTH" MEANS THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES PROVIDED FOR IN 2-15-2104.~~

~~(4)(5)(6)~~ "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(5)(6)(7)~~ "Commence to construct" means:

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

*Corrected Pages To insert in Every Bill.* -2-

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 ~~(7)~~ ~~(8)~~ (10),  
16 including upgrading to a design capacity covered by  
17 subsection ~~(7)~~ ~~(8)~~ (10)(b), except that the term does not  
18 include normal maintenance or repair of an existing  
19 facility.

20 ~~(6)~~ ~~(7)~~ (8) "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 ~~(7)~~ ~~(8)~~ (10) "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 ~~duty-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 ~~duty-authorized-state-air-and-water-quality-agency-permit~~  
 4 ~~hearing--is--required~~ ~~ECONOMETIVE-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 OF 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 ~~(9) THE HEARING EXAMINER SHALL ADOPT RULES DESIGNED TO~~  
4 ~~EXCLUDE REPETITIVE, REDUNDANT, OR IRRELEVANT TESTIMONY AND~~  
5 ~~SHALL ADOPT OTHER RULES OF EVIDENCE TO EXPEDITE AND INSURE~~  
6 ~~AN ORDERLY PROCEEDING.~~

7 ~~(10) 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 ~~(11) At the conclusion of the hearing, the~~  
20 ~~hearing examiner shall declare the hearing closed and shall,~~  
21 ~~within 90 days of that date, prepare and submit to the~~  
22 ~~board and the duly 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: "application;" 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"

14. Page 10, line 13.  
Strike: "(a)"  
Insert: "(1)"  
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

19. Page 12, lines 13 through 16.  
Following: "4e)" 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"

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

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