

SENATE BILL 514

IN THE SENATE

February 14, 1979	Introduced and referred to Committee on Natural Resources.
February 19, 1979	Committee recommend bill, do pass.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, as amended.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Natural Resources.
April 20, 1979	Died in Committee.

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*Senate* BILL NO. *514*  
*Robin Anderson*

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT BY AMENDING SECTIONS 75-20-104, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218 THROUGH 75-20-220, 75-20-304, 75-20-501, AND 75-20-503, MCA; ALSO AMENDING SECTION 75-20-1102, MCA; AND REPEALING SECTIONS 75-20-221, 75-20-222, 75-20-301, AND 75-20-303, MCA."

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

Section 1. 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) "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.

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(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302. "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(4) "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) "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 temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

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

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

1 (d) the relocation or upgrading of an existing  
2 facility defined by (b) or (c) of subsection (7), including  
3 upgrading to a design capacity covered by subsection (7)(b),  
4 except that the term does not include normal maintenance or  
5 repair of an existing facility.

6 (6) "Department" means the department of natural  
7 resources and conservation provided for in Title 2, chapter  
8 15, part 33. ~~"Department of health" means the department of~~  
9 ~~health and environmental sciences provided for in Title 2,~~  
10 ~~chapter 15, part 21.~~

11 (7) "Facility" means:

12 (a) each plant, unit, or other facility and  
13 associated facilities, except for oil and gas refineries,  
14 designed for or capable of:

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

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

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

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

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

6 (b) each electric transmission line and associated  
7 facilities of a design capacity of more than 69 kilovolts,  
8 except that the term does not include an electric  
9 transmission line and associated facilities of a design  
10 capacity of 230 kilovolts or less and 10 miles or less in  
11 length;

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

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

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

21 ~~(8) "Modification for compatibility" means a change in~~  
22 ~~the location, design, or operation of a facility that~~  
23 ~~results from wishes of affected landowners upon whose land~~  
24 ~~the facility is located, which results from requirements of~~  
25 ~~other government agencies or which would provide less~~

1 environmental impact.

2 ~~{8}{9}~~ "Municipality" means any county or municipality  
3 within this state.

4 ~~{9}{10}~~ "Person" means any individual, group, firm,  
5 partnership, corporation, cooperative, association,  
6 government subdivision, government agency, local government,  
7 or other organization or entity.

8 ~~{10}{11}~~ "Utility" means any person engaged in any  
9 aspect of the production, storage, sale, delivery, or  
10 furnishing of heat, electricity, gas, hydrocarbon products,  
11 or energy in any form for ultimate public use."

12 Section 2. Section 75-20-211, MCA, is amended to read:

13 "75-20-211. Application -- filing and contents --  
14 proof of service and notice. (1) (a) An applicant for a  
15 certificate shall file with the department and the  
16 department of health a verified joint application, in such  
17 form as the board and board of health, by rule or the  
18 department and department of health by order prescribes  
19 prescribe, containing the following information:

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

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

24 ~~(iii) a statement explaining the need for the facility~~  
25 information required by other state agencies listed in

1 75-20-211(3);

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

7 (v) such other information as the applicant considers  
8 relevant or as the board and board of health by rule or the  
9 department and department of health by order requires  
10 requires;

11 (vi) a copy of the certification of need from the  
12 public service commission issued pursuant to 75-20-501; and  
13 (vii) an environmental assessment study plan to satisfy  
14 the criteria set forth in 75-20-503.

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

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

23 (3) An application shall be accompanied by proof of  
24 service of a copy of the application on the chief--executive  
25 ~~officer of each municipality and the head of each government~~

1 ~~agency--charged--with--the--duty--of--protecting--the--environment~~  
 2 ~~or--of--planning--land--use--in--the--area~~ county commissioners,  
 3 city or county planning boards, and federal agencies who  
 4 have responsibilities in the area or alternative areas in  
 5 which any portion of the proposed facility ~~is--to~~ may be  
 6 ~~located, both as primarily and as alternatively proposed,~~  
 7 and on the following state agencies:

8 (a) environmental quality council;

9 (b) department of fish and game;

10 (c) department of state lands;

11 (d) department of community affairs;

12 (e) department of highways; and

13 (f) department of revenue.

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

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

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

5 Section 3. Section 75-20-213, MCA, is amended to read:  
 6 "75-20-213. Amendment -- restrictions. (1) An  
 7 application for an amendment of an application or a  
 8 certificate shall be in such form and contain such  
 9 information as the board by rule or the department by order  
 10 prescribes. Notice of such an application shall be given as  
 11 set forth in (3), (4), and (5) of 75-20-211.

12 (2) If an amendment to an original application would  
 13 result in a substantial change of the original application,  
 14 such an amendment shall be considered as a new application  
 15 and a new filing fee shall be required.

16 ~~(3) The board shall determine, upon 15 days' public~~  
 17 ~~notice, whether an amendment constitutes a substantial~~  
 18 ~~change or a modification for compatibility. A modification~~  
 19 ~~for compatibility is not subject to the requirements for a~~  
 20 ~~substantial change under this chapter and rules issued~~  
 21 ~~pursuant to this chapter."~~

22 Section 4. Section 75-20-215, MCA, is amended to read:  
 23 "75-20-215. ~~Filing fee--accountability--refund--~~  
 24 ~~use.~~ Application -- environmental study -- evaluation and  
 25 report on proposed facility -- hearings. (1) -- A -- filing -- fee

1 shall be deposited in the earmarked revenue fund for the use  
2 of the department in administering this chapter. The  
3 applicant shall pay to the department a filing fee with the  
4 application, based upon the estimated cost of the facility  
5 according to the declining scale which follows:

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

7 (b) 1% of any estimated cost over \$1 million and up to  
8 \$20 million, plus

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

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

13 (e) 0.125% of any amount of estimated cost over \$300  
14 millions

15 (f) If an application consists of a combination of two  
16 or more facilities, the filing fee shall be based on the  
17 total estimated cost of the combined facilities.

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

22 (h) The revenues derived from filing fees shall be  
23 used by the department in compiling the information required  
24 for rendering a decision on a certificate and for carrying  
25 out its other responsibilities under this chapter with

1 respect to the facility covered by the certificate for a  
2 period not to exceed 5 years after the certificate is issued  
3 for facilities defined in 75-20-104(f)(b) and (c) or not to  
4 exceed 10 years after the certificate is issued for  
5 facilities defined in 75-20-104(f)(e), (d), and (g). (1)

6 Upon receipt of an application, the department shall within  
7 30 days notify the applicant in writing that:

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

10 (b) the application is not in compliance and shall  
11 list the deficiencies in the application.

12 (2) Upon correction of these deficiencies and  
13 resubmission by the applicant, the department shall within  
14 30 days notify the applicant in writing that the application  
15 is in compliance and is accepted as complete. The applicant  
16 may after an application is accepted submit supplemental  
17 material in a timely manner as requested by the department  
18 or as offered by the applicant to explain, support, or  
19 provide detail with respect to an item described in general  
20 terms in the original application or make modifications for  
21 compatibility as defined in 75-20-104. Once an application  
22 is accepted as complete, its effective filing date relates  
23 back to the original date the application was filed.

24 (3) Upon acceptance of an application and notification  
25 to the applicant as provided in subsection (1), the

1 department shall, acting as lead agency for the state and in  
 2 cooperation and coordination with other state agencies,  
 3 within 30 days thereafter, forward to the applicant and the  
 4 board in writing an estimate by 3-month periods of state  
 5 agency costs for auditing the applicant's development of an  
 6 environmental assessment and for the department's  
 7 preparation of an environmental impact statement.

8 (4) Upon acceptance of an application and notification  
 9 of the applicant as provided in subsection (1), the  
 10 department shall, acting as lead agency for the state and in  
 11 cooperation and coordination with other state agencies, meet  
 12 with the applicant within 30 days thereafter to review the  
 13 environmental study plan to be submitted for bids and select  
 14 potential contractors who are acceptable to the department  
 15 and applicant. The department shall submit to bid contracts  
 16 for performance of the environmental studies and development  
 17 of an environmental assessment. Based upon the bids  
 18 received, the applicant and department shall thereafter  
 19 agree upon the party hired to undertake the performance of  
 20 the contract consistent with the study plan. If the  
 21 department and the applicant are unable to agree as to the  
 22 study plan, the list of bidders, the contractor, or any  
 23 other matter related to the environmental assessment of the  
 24 application, the applicant may request a hearing by the  
 25 board and the board shall hold a hearing within 30 days of

1 the request and shall render a decision on the matter within  
 2 30 days.

3 (5) Upon agreement between the applicant and the  
 4 department, acting as lead agency for the state, or a  
 5 decision by the board as to the contractor for the  
 6 environmental studies and the development of an  
 7 environmental assessment, the applicant shall enter into  
 8 contracts for the environmental studies and the development  
 9 of an environmental assessment. The applicant shall also  
 10 contract with the department for those costs for which the  
 11 department, acting as lead agency for the state, may charge  
 12 the applicant for its work in auditing the environmental  
 13 studies and the development of an environmental statement.  
 14 The department may collect a fee for environmental study  
 15 work as provided in this subsection.

16 (6) (a) In no case may an applicant be required to  
 17 fund environmental study work, the total costs of which  
 18 exceed 2% of any estimated cost up to \$1 million; plus 1% of  
 19 any estimated cost over \$1 million and up to \$20 million;  
 20 plus 0.5% of any estimated cost over \$20 million and up to  
 21 \$100 million; plus 0.25% of any amount of estimated cost  
 22 over \$100 million and up to \$300 million; plus 0.125% of any  
 23 amount of estimated cost over \$300 million. Environmental  
 24 study work, including payments to contractors, the  
 25 department, other state agencies, or to federal agencies,

1 provided that the work being done by such agencies is valid  
 2 and useful for the applicant, for the development of an  
 3 environmental assessment, or the preparation of an  
 4 environmental impact statement, is creditable to the fee to  
 5 be collected under this subsection in relation to the  
 6 estimated cost of the facility.

7 (b) If the applicant believes that the total costs of  
 8 the studies and charges are immeasurable or exceed the  
 9 limitations provided in subsection (5)(a) above, the  
 10 applicant may request a hearing by the board and the board  
 11 shall hold a hearing within 30 days, at which time the  
 12 applicant shall present estimates of the total costs of the  
 13 studies and the estimated cost of the facility. These  
 14 estimates shall be supported by documented evidence. Within  
 15 30 days thereafter, the board shall make a decision as to  
 16 the scope and costs of the studies to be performed within  
 17 the limitations set forth in subsection (5)(a).

18 (c) The department may contract with a potential  
 19 applicant in advance of the filing of a formal application  
 20 for the development of information or provision of services  
 21 required in this chapter. Payments made to the department  
 22 under such a contract shall be credited against the costs  
 23 payable under this chapter."

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

25 "75-20-216. Study, evaluation, and report on proposed

1 facility -- assistance by other agencies. (1) Upon receipt  
 2 acceptance of an application complying with 75-20-211  
 3 through 75-20-215(1), the department, as state lead agency,  
 4 shall commence supervise an intensive study and evaluation  
 5 of the proposed facility and its effects--considering--~~at~~  
 6 ~~the--criteria--listed--in--75-20-301--and--75-20-503~~ and shall  
 7 coordinate its study and evaluation of the proposed  
 8 facility with other state agencies. Action taken by other  
 9 state agencies or by federal agencies within their special  
 10 fields of expertise shall be included within the  
 11 department's environmental impact statement and  
 12 recommendations to the board.

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



1 of the facilities.

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

12 (2) The environmental quality council and the  
 13 departments of fish and game, state lands, community  
 14 affairs, highways, and revenue shall report to the  
 15 department within 6 months following the effective date of  
 16 an application. This report shall include any action  
 17 required by any law of that agency and information relating  
 18 to the impact of the proposed facility on each department's  
 19 area of expertise. The report may include opinions as to the  
 20 advisability of granting, denying, or modifying the  
 21 certificate. The department shall allocate funds obtained  
 22 from filing fees to the departments making reports to  
 23 reimburse them for the costs of compiling information and  
 24 issuing the required reports.

25 (3) The department of health acting singly or with the

1 board of health shall within 1 year following the effective  
 2 date of an application as defined in 75-20-215(2) issue any  
 3 decision, opinion, or order required by law of the  
 4 department of health or board of health. The decision,  
 5 opinion, or order, with or without conditions, is conclusive  
 6 on all matters of air and water quality impacts under the  
 7 federal and state air and water quality statutes that the  
 8 department and board of health administer and for the  
 9 purposes of this chapter. The decision, opinion, or order of  
 10 the department and board of health satisfies the  
 11 requirements by those agencies under the Montana  
 12 Environmental Policy Act; therefore, the department and  
 13 board of health shall not prepare an environmental impact  
 14 statement separate from the one prepared, if any, by the  
 15 department. A decision by the department of health or board  
 16 of health is subject to judicial review pursuant to the air  
 17 and water statutes administered by the department of health  
 18 and board of health.

19 (4) The department shall make a report to the board  
 20 within 9 months from the effective filing date. The report  
 21 shall include a statement regarding actions taken by and  
 22 reports from other agencies pursuant to subsections (2) and  
 23 (3), an analysis prepared pursuant to the Montana  
 24 Environmental Policy Act, if any, and other pertinent  
 25 documents resulting from its study and evaluation and

1 coordination with other state agencies."

2 Section 6. Section 75-20-218, MCA, is amended to read:

3 "75-20-218. Hearing date --- to cation Appointment of  
 4 hearing examiner -- prehearing conference -- hearing  
 5 procedure. Upon receipt of the department's report submitted  
 6 under 75-20-216, the board shall set a date for a hearing to  
 7 begin not more than 120 days after the receipt. Except for  
 8 those hearings involving applications submitted for  
 9 facilities as defined in (b) and (c) of 75-20-104(7),  
 10 certification hearings shall be conducted by the board in  
 11 the county seat of Lewis and Clark County or the county in  
 12 which the facility or the greater portion thereof is to be  
 13 located. (1) Within 30 days after the department's report  
 14 has been filed with the board pursuant to 75-20-216(4), the  
 15 board shall appoint a hearing examiner who shall organize  
 16 and supervise the prehearing conference and hearing.

17 (2) Within 60 days after the department's report has  
 18 been filed with the board pursuant to 75-20-216(4), a  
 19 prehearing conference shall be held following notice to  
 20 those persons entitled to receive notice under 75-20-211.

21 (3) The hearing examiner shall set the date for a  
 22 hearing, which shall commence within 90 days after the  
 23 department's report has been filed with the board pursuant  
 24 to 75-20-216(4).

25 (4) Any studies, investigations, reports, or any other

1 documentary evidence, including that prepared by the  
 2 department, that any party wishes the board to consider or  
 3 that the board itself expects to utilize or rely upon shall  
 4 be made a part of the record. A record shall be made of the  
 5 hearing and of all testimony taken.

6 (5) The prehearing conference shall be directed toward  
 7 a determination of the issues presented by the application,  
 8 the environmental impact statement, and an identification of  
 9 the witnesses and documentary exhibits to be presented by  
 10 the active parties who intend to participate in the hearing.

11 (6) The hearing examiner shall require the active  
 12 parties to submit in writing and serve upon the other active  
 13 parties all direct testimony that they propose and any  
 14 studies, investigations, reports, or other exhibits that any  
 15 active party wishes the board to consider. Any documents  
 16 that the board itself wishes to utilize or rely on shall be  
 17 submitted and served in like manner at least 20 days prior  
 18 to the date set for the hearing. Witnesses for active  
 19 parties whose testimony is not so submitted shall not be  
 20 called by such parties except upon rebuttal, and in such  
 21 event, their testimony shall be limited to the rebuttal of  
 22 evidence presented in direct testimony.

23 (7) Public witnesses and other interested public  
 24 parties may submit written testimony to the hearing examiner  
 25 in lieu of appearance at least 20 days prior to the date set

1 for the hearing. This testimony shall be made available to  
 2 the active parties by the examiner. The testimony shall be  
 3 admitted into the record without cross-examination; but if  
 4 any active party desires cross-examination of such witnesses  
 5 after review of filed written testimony, this  
 6 cross-examination may be obtained by request for deposition  
 7 filed with the hearing examiner, who may issue a subpoena to  
 8 the witness. An active party may call such a witness in its  
 9 case with a subpoena to be issued by the hearing examiner;  
 10 provided, however, that any such witness shall be considered  
 11 an adverse witness and must be examined under the rules  
 12 applicable thereto. Any active party calling such witness  
 13 for deposition or appearance shall tender to the witness in  
 14 advance such fees and expenses as are allowable in  
 15 accordance with Rule 4 of the Montana Rules of Civil  
 16 Procedure and shall advise the hearing examiner and the  
 17 other active parties of the intention to depose or call such  
 18 a witness.

19 (8) All proceedings under this chapter are governed by  
 20 the procedures set forth in this chapter and by rules  
 21 adopted by the board. No other rules of procedure or  
 22 evidence, including the contested case procedures of the  
 23 Montana Administrative Procedure Act, apply.

24 (9) The hearing examiner may make rules designed to  
 25 exclude repetitive, redundant, or irrelevant testimony and

1 may make other rules of evidence. The hearing examiner  
 2 shall issue a prehearing order specifying the issues of fact  
 3 and of law, identifying the witnesses of the active parties,  
 4 naming the public witnesses and other interested parties who  
 5 have submitted written testimony in lieu of appearance,  
 6 outlining the order in which the hearing shall proceed, and  
 7 any other special rules to expedite the hearing which the  
 8 hearing examiner shall adopt with the approval of the board.

9 (10) At the conclusion of the hearing, the hearing  
 10 examiner shall declare the record closed and shall within 60  
 11 days of that date prepare and submit to the board proposed  
 12 findings of fact, conclusions of law, and a recommended  
 13 decision.

14 (11) The hearing examiner appointed to conduct a  
 15 certification proceeding under this chapter may not be a  
 16 member of the board or an employee of the department. The  
 17 examiner shall insure that the duration of the proceedings,  
 18 beginning with the date the department's report is filed  
 19 with the board until the recommended report and order of the  
 20 examiner are filed with the board, does not exceed 12  
 21 calendar months, unless extended by the board for good  
 22 cause."

23 Section 7. Section 75-20-219, MCA, is amended to read:  
 24 "75-20-219. Hearing--on--amendment---of---application  
 25 Parties to certification proceeding -- waiver by failure to

participate. ~~On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the application.~~ (1) The parties to a certification proceeding may include as active parties:

(a) the applicant;

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

(c) any person residing in a county whose commissioners are entitled to receive service of a copy of the application under 75-20-211(3); any nonprofit organization, a majority of whose members would be substantially affected by the application 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; and

(d) any landowner upon whose land the preferred or

alternate location of the facility is located.

(2) Any Montana citizen and any party referred to in (b), (c), or (d) of (1) above may participate as a public party to the certification proceedings.

(3) Any party identified in (b) and (c) of (1) of this section waives the right to be a party if the party does not actively participate, orally or in writing, at the hearing before the board.

(4) The department's participation in a hearing under this chapter is limited to presentation of its studies, evaluations, recommendations, transcripts of hearings, other pertinent documents resulting from its study and evaluations, and a final environmental impact statement conducted pursuant to 75-20-216."

Section 8. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner---restrictions. Decision of board -- findings necessary for certificate -- conditions imposed. 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. (1) Within 60 days after the last day of submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the records either granting or denying the application as filed or

1 granting it upon such terms, conditions, or modifications of  
 2 the construction, operation, or maintenance of the facility  
 3 as the board considers appropriate. In rendering a decision  
 4 on an application for a certificate, the board shall issue  
 5 an opinion stating its reasons for the action taken.

6 (2) Any certificate issued by the board shall include  
 7 the following:

8 (a) an environmental evaluation statement related to  
 9 the facility being certified. The statement shall include  
 10 but not be limited to analysis of the following information:

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

12 (ii) any adverse environmental effects that cannot be  
 13 avoided by issuance of the certificate;

14 (iii) problems and objections raised by other federal  
 15 and state agencies and interested groups; and

16 (iv) alternatives to the proposed facility;

17 (b) in the case of an electric, gas, or liquid  
 18 transmission line or aqueduct:

19 (i) what part, if any, of such facility or associated  
 20 facilities shall be located underground;

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

25 (iii) that the facility will serve the interests of

1 utility system economy and reliability;

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

11 (d) that the utility facility will serve the public  
 12 interest, convenience, and necessity. In determining that  
 13 the utility facility will serve the public interest,  
 14 convenience, and necessity under (1) of this section, the  
 15 board shall consider:

16 (i) the items listed in subsection (1) of this  
 17 section;

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

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

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

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

25 (3) If the board determines that the location of all

1 or a part of the proposed facility should be modified, it  
 2 may condition its certificate upon such modification,  
 3 provided that the counties and persons residing therein  
 4 affected by the modification have been given reasonable  
 5 notice on the modification.

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

9 (5) A statement signed by the applicant showing  
 10 agreement to comply with the requirements of this chapter  
 11 and conditions of the certificate."

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

13 "75-20-304. Waiver of provisions of certification  
 14 proceedings. (1) Any of the provisions described in  
 15 75-20-216 through ~~75-20-222~~ 75-20-220 and this part may be  
 16 waived by the board for good cause shown with respect to  
 17 applications filed before January 1, ~~1975~~ 1980. Applications  
 18 for certificates under this subsection must be promptly  
 19 filed.

20 (2) The board may waive compliance with any of the  
 21 provisions of 75-20-216 through ~~75-20-222~~ 75-20-220 and this  
 22 part if the applicant makes a clear and convincing showing  
 23 to the board public service commission at a public hearing  
 24 that an immediate, urgent need for a facility exists and  
 25 that the applicant did not have knowledge that the need for

1 the facility existed sufficiently in advance to fully comply  
 2 with the provisions of 75-20-216 through ~~75-20-222~~ 75-20-220  
 3 and this part.

4 (3) 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 or if  
 10 there exists a significant energy shortage or voltage  
 11 problem in the state or a part of it, and there exists an  
 12 immediate need for construction of a new facility or  
 13 associated facility or the relocation of a previously  
 14 existing facility or associated facility in order to promote  
 15 the public welfare."

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

18 "75-20-401. Additional requirements by other  
 19 governmental agencies not permitted after issuance of  
 20 certificate -- exceptions. (1) Notwithstanding any other  
 21 law, no state or regional agency or municipality or other  
 22 local government may require any approval, consent, permit,  
 23 certificate, or other condition for the construction,  
 24 operation, or maintenance of a facility authorized by a  
 25 certificate issued pursuant to this chapter, except that the

1 ~~state air and water quality agency or agencies shall retain~~  
 2 ~~authority which they have or may be granted to determine~~  
 3 ~~compliance of the proposed facility with state and federal~~  
 4 ~~standards and implementation plans for air and water quality~~  
 5 ~~and to enforce those standards~~ department and board of  
 6 health shall retain the sole authority to enforce permits  
 7 issued pursuant to state and federal air and water quality  
 8 statutes and this chapter and to monitor air and water  
 9 quality performance and compliance of facilities certified  
 10 under this chapter.

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

14 Section 11. Section 75-20-406, MCA, is amended to  
 15 read:

16 "75-20-406. Judicial review of board decision. (1) Any  
 17 party as defined in ~~75-20-221~~ 75-20-219 aggrieved by the  
 18 final decision of the board on an application for a  
 19 certificate may obtain judicial review of that decision by  
 20 the filing of a petition in a state district court of  
 21 competent jurisdiction.

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

25 Section 12. Section 75-20-501, MCA, is amended to

1 read:

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

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

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

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

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

(d) projections of the demand for the service rendered 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~~ public service commission which shall give public notice throughout the state of ~~its~~ the plan by filing the plan with the ~~department~~, 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) The public service commission shall hold a public hearing on long-range plans filed under this section within 60 days after such plans are filed. Within 60 days after the hearing, the public service commission shall determine

if the projections of demand for service are valid and if facilities or alternate facilities or a combination thereof are needed to meet the projections of demand. If so, such determinations shall be certified by the commission. These certifications shall remain in effect unless the public service commission finds evidence in subsequent long-range plans under this section to revoke the certification upon proper hearing. Once an application is filed with the department for a specific facility under this chapter, the certification of need is conclusive and cannot be revoked. A certificate of need pursuant to this section is conclusive in any condemnation proceeding."

Section 13. Section 75-20-503, MCA, is amended to read:

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

~~(1) energy needs;~~

~~(2) growth in demand and projections of need;~~

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

~~(c) availability and desirability of alternative~~



1 ~~sources of energy in lieu of the proposed facility;~~

2 ~~(d) promotional activities of the utility which may~~

3 ~~have given rise to the need for this facility;~~

4 ~~(e) socially beneficial uses of the output of this~~

5 ~~facility, including its uses to protect or enhance~~

6 ~~environmental quality;~~

7 ~~(f) conservation activities which could reduce the~~

8 ~~need for more energy;~~

9 ~~(g) research activities of the utility of new~~

10 ~~technology available to it which might minimize~~

11 ~~environmental impact;~~

12 ~~(2)(1) land use impacts;~~

13 ~~(a) area of land required and ultimate use;~~

14 ~~(b) consistency with areawide state and regional land~~

15 ~~use plans;~~

16 ~~(c) consistency with existing and projected nearby~~

17 ~~land uses;~~

18 ~~(d) alternative uses of the site;~~

19 ~~(e) impact on population already in the area;~~

20 ~~population attracted by construction or operation of the~~

21 ~~facility itself;~~

22 ~~(f) impact of availability of energy from this~~

23 ~~facility on growth patterns and population dispersal;~~

24 ~~(g) geologic suitability of the site or routes;~~

25 ~~(h) seismic characteristics;~~

1 ~~(i) construction practices;~~

2 ~~(j) extent of erosion, scouring, wasting of land, both~~

3 ~~at site and as a result of fossil fuel demands of the~~

4 ~~facility;~~

5 ~~(k) corridor design and construction precautions for~~

6 ~~transmission lines or aqueducts;~~

7 ~~(l) scenic impacts;~~

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

9 ~~(n) impacts on important historic architectural~~

10 ~~archeological and cultural areas and features;~~

11 ~~(o) extent of recreation opportunities and related~~

12 ~~compatible uses;~~

13 ~~(p) public recreation plan for the project;~~

14 ~~(q) public facilities and accommodations;~~

15 ~~(r) opportunities for joint use with energy intensive~~

16 ~~industries or other activities to utilize the waste heat~~

17 ~~from facilities;~~

18 ~~(3)(2) water resources impacts;~~

19 ~~(a) hydrologic studies of adequacy of water supply and~~

20 ~~impact of facility on streamflow, lakes, and reservoirs;~~

21 ~~(b) hydrologic studies of impact of facilities on~~

22 ~~groundwater;~~

23 ~~(c) cooling system evaluation, including consideration~~

24 ~~of alternatives;~~

25 ~~(d) inventory of effluents, including physical~~

1 chemical, biological and radiological characteristics  
 2 (e) hydrologic studies of effects of effluents on  
 3 receiving waters, including mixing characteristics of  
 4 receiving waters, changed evaporation due to temperature  
 5 differentials, and effect of discharge on bottom sediments  
 6 (f) relationship to water quality standards  
 7 (g) effects of changes in quantity and quality on  
 8 water use by others, including both withdrawal and in situ  
 9 uses  
 10 (h) relationship to projected uses  
 11 (i) relationship to water rights  
 12 (j) effects on plant and animal life, including algae,  
 13 macroinvertebrates, and fish populations  
 14 (k) effects on unique or otherwise significant  
 15 ecosystems, e.g., wetlands  
 16 (l) monitoring programs  
 17 (4) air quality impacts  
 18 (a) meteorology, wind direction and velocity, ambient  
 19 temperature ranges, precipitation values, inversion  
 20 occurrence, other effects on dispersion  
 21 (b) topography, factors affecting dispersion  
 22 (c) standards in effect and projected for emissions  
 23 (d) design capability to meet standards  
 24 (e) emissions and controls  
 25 (f) stack design

1 (ii) particulates  
 2 (iii) sulfur oxides  
 3 (iv) oxides of nitrogen and  
 4 (v) heavy metals, trace elements, radioactive  
 5 materials, and other toxic substances  
 6 (f) relationship to present and projected air quality  
 7 of the area  
 8 (g) monitoring programs  
 9 (5)(1) solid wastes impacts impacts:  
 10 (a) solid waste inventory  
 11 (b) disposal program  
 12 (c) relationship of disposal practices to  
 13 environmental quality criteria  
 14 (d) capacity of disposal sites to accept projected  
 15 waste loadings  
 16 (6)(1) radiation impacts; and  
 17 (a) land use controls over development and populations  
 18 (b) wastes and associated disposal program for solids,  
 19 liquids, radioactive, and gaseous wastes  
 20 (c) analyses and studies of the adequacy of  
 21 engineering safeguards and operating procedures  
 22 (d) monitoring adequacy of devices and sampling  
 23 techniques  
 24 (7)(1) noise impacts;  
 25 (a) construction period levels

1 ~~{b}--operational-levels~~  
 2 ~~{c}--relationship-of-present-and-projected-noise-levels~~  
 3 ~~to-existing-and-potential-stricter-noise-standards~~  
 4 ~~{d}--monitoring--adequacy-of-devices-and-methods"~~

5 Section 14. Section 75-20-1102, MCA, is amended to  
 6 read:

7 "75-20-1102. Definitions. Unless the context clearly  
 8 requires otherwise, the following definitions apply in this  
 9 part:

10 (1) "Application" means an application for a  
 11 certificate of environmental compatibility and public need  
 12 under the Montana Major Facility Siting Act for only a  
 13 utility facility designed for or capable of:

14 (a) generating at 50 megawatts of electricity or more  
 15 or any addition thereto (except pollution control facilities  
 16 approved by the department of health and environmental  
 17 sciences added to an existing plant) having an estimated  
 18 cost in excess of \$250,000;

19 (b) producing 100 million cubic feet of gas per day or  
 20 more or any addition thereto having an estimated cost in  
 21 excess of \$250,000;

22 (c) producing 50,000 barrels of liquid hydrocarbon  
 23 products per day or more or any addition thereto having an  
 24 estimated cost in excess of \$250,000; or

25 (d) enriching uranium minerals.

1 (2) "Board" means the board of natural resources and  
 2 conservation.

3 (3) "Certificate" means certificate of environmental  
 4 compatibility and public need.

5 (4) "Department" means the department of natural  
 6 resources and conservation."

7 Section 15. Repealer. Sections 75-20-221, 75-20-222,  
 8 75-20-301, and 75-20-303, MCA, are repealed.

-End-

1 *Senate* BILL NO. *514*  
 2 INTRODUCED BY *Radis Johnson*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 MONTANA MAJOR FACILITY SITING ACT BY AMENDING SECTIONS  
 6 75-20-104, 75-20-211, 75-20-213, 75-20-215, 75-20-216,  
 7 75-20-218 THROUGH 75-20-220, 75-20-304, 75-20-501, AND  
 8 75-20-503, MCA; ALSO AMENDING SECTION 75-20-1102, MCA; AND  
 9 REPEALING SECTIONS 75-20-221, 75-20-222, 75-20-301, AND  
 10 75-20-303, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 75-20-104, MCA, is amended to read:

14 "75-20-104. Definitions. In this chapter, unless the  
 15 context requires otherwise the following definitions apply:

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

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

1 (3) "Board" means the board of natural resources and  
 2 conservation provided for in 2-15-3302. "Board of health"  
 3 means the board of health and environmental sciences  
 4 provided for in 2-15-2104.

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

9 (5) "Commence to construct" means:

10 (a) any clearing of land, excavation, construction, or  
 11 other action that would affect the environment of the site  
 12 or route of a facility but does not mean changes needed for  
 13 temporary use of sites or routes for nonutility purposes or  
 14 uses in securing geological data, including necessary  
 15 borings to ascertain foundation conditions;

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

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

1 (d) the relocation or upgrading of an existing  
2 facility defined by (b) or (c) of subsection (7), including  
3 upgrading to a design capacity covered by subsection (7)(b),  
4 except that the term does not include normal maintenance or  
5 repair of an existing facility.

6 (6) "Department" means the department of natural  
7 resources and conservation provided for in Title 2, chapter  
8 15, part 33. "Department of health" means the department of  
9 health and environmental sciences provided for in Title 2,  
10 chapter 15, part 21a.

11 (7) "Facility" means:

12 (a) each plant, unit, or other facility and  
13 associated facilities, except for oil and gas refineries,  
14 designed for or capable of:

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

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

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

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

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

6 (b) each electric transmission line and associated  
7 facilities of a design capacity of more than 69 kilovolts,  
8 except that the term does not include an electric  
9 transmission line and associated facilities of a design  
10 capacity of 230 kilovolts or less and 10 miles or less in  
11 length;

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

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

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

21 (8) "Modification for compatibility" means a change in  
22 the location, design, or operation of a facility that  
23 results from wishes of affected landowners upon whose land  
24 the facility is located, which results from requirements of  
25 other government agencies or which would provide less

1 environmental impact.

2 ~~{8}{9}~~ "Municipality" means any county or municipality  
3 within this state.

4 ~~{9}{10}~~ "Person" means any individual, group, firm,  
5 partnership, corporation, cooperative, association,  
6 government subdivision, government agency, local government,  
7 or other organization or entity.

8 ~~{10}{11}~~ "Utility" means any person engaged in any  
9 aspect of the production, storage, sale, delivery, or  
10 furnishing of heat, electricity, gas, hydrocarbon products,  
11 or energy in any form for ultimate public use."

12 Section 2. Section 75-20-211, MCA, is amended to read:

13 "75-20-211. Application -- filing and contents --  
14 proof of service and notice. (1) (a) An applicant for a  
15 certificate shall file with the department and the  
16 department of health a verified joint application, in such  
17 form as the board and board of health by rule or the  
18 department and department of health by order ~~prescribes~~  
19 prescribe, containing the following information:

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

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

24 ~~(iii) a statement explaining the need for the facility~~  
25 information required by other state agencies listed in

1 75-20-211(3):

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

7 (v) such other information as the applicant considers  
8 relevant or as the board and board of health by rule or the  
9 department and department of health by order ~~requires~~  
10 require;

11 (vi) a copy of the certification of need from the  
12 public service commission issued pursuant to 75-20-501; and  
13 (vii) an environmental assessment study plan to satisfy  
14 the criteria set forth in 75-20-503.

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

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

23 (3) An application shall be accompanied by proof of  
24 service of a copy of the application on the chief--executive  
25 officer of each municipality and the head of each government

1 ~~agency charged with the duty of protecting the environment~~  
 2 ~~or of planning land use in the area~~ county commissioners,  
 3 city or county planning boards, and federal agencies who  
 4 have responsibilities in the area or alternative areas in  
 5 which any portion of the proposed facility ~~is to~~ may be  
 6 ~~located, both as priority and as alternatively proposed,~~  
 7 and on the following state agencies:

- 8 (a) environmental quality council;  
 9 (b) department of fish and game;  
 10 (c) department of state lands;  
 11 (d) department of community affairs;  
 12 (e) department of highways; and  
 13 (f) department of revenue.

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

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

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

5 Section 3. Section 75-20-213, MCA, is amended to read:  
 6 "75-20-213. Amendment -- restrictions. (1) An  
 7 application for an amendment of an application or a  
 8 certificate shall be in such form and contain such  
 9 information as the board by rule or the department by order  
 10 prescribes. Notice of such an application shall be given as  
 11 set forth in (3), (4), and (5) of 75-20-211.

12 (2) If an amendment to an original application would  
 13 result in a substantial change of the original application,  
 14 such an amendment shall be considered as a new application  
 15 and a new filing fee shall be required.

16 (3) The board shall determine, upon 15 days' public  
 17 notice, whether an amendment constitutes a substantial  
 18 change or a modification for compatibility. A modification  
 19 for compatibility is not subject to the requirements for a  
 20 substantial change under this chapter and rules issued  
 21 pursuant to this chapter."

22 Section 4. Section 75-20-215, MCA, is amended to read:  
 23 "75-20-215. ~~Filing fee -- accountability -- refund --~~  
 24 ~~use.~~ Application -- environmental study -- evaluation and  
 25 report on proposed facility -- hearings. ~~It~~ -- A -- filing -- fee

1 shall be deposited in the earmarked revenue fund for the use  
2 of the department in administering this chapter. The  
3 applicant shall pay to the department a filing fee with the  
4 application based upon the estimated cost of the facility  
5 according to the declining scale which follows:

- 6 (a) 2% of any estimated cost up to \$1 million plus  
7 (b) 1% of any estimated cost over \$1 million and up to  
8 \$20 million plus  
9 (c) 0.5% of any estimated cost over \$20 million and up  
10 to \$100 million plus  
11 (d) 0.25% of any amount of estimated cost over \$100  
12 million and up to \$300 million plus  
13 (e) 0.125% of any amount of estimated cost over \$300  
14 million  
15 (2) If an application consists of a combination of two  
16 or more facilities, the filing fee shall be based on the  
17 total estimated cost of the combined facilities.  
18 (3) The applicant is entitled to an accounting of  
19 moneys expended and to a refund of that portion of the  
20 filing fee not expended by the department in carrying out  
21 its responsibilities under this chapter.  
22 (4) The revenues derived from filing fees shall be  
23 used by the department in compiling the information required  
24 for rendering a decision on a certificate and for carrying  
25 out its other responsibilities under this chapter with

1 respect to the facility covered by the certificate for a  
2 period not to exceed 5 years after the certificate is issued  
3 for facilities defined in 75-20-104(7)(b) and (c) or not to  
4 exceed 10 years after the certificate is issued for  
5 facilities defined in 75-20-104(7)(d) and (e). (1)  
6 Upon receipt of an application, the department shall within  
7 30 days notify the applicant in writing that:  
8 (a) the application is in compliance and is accepted  
9 as complete; or  
10 (b) the application is not in compliance and shall  
11 list the deficiencies in the application.  
12 (2) Upon correction of these deficiencies and  
13 resubmission by the applicant, the department shall within  
14 30 days notify the applicant in writing that the application  
15 is in compliance and is accepted as complete. The applicant  
16 may after an application is accepted submit supplemental  
17 material in a timely manner as requested by the department  
18 or as offered by the applicant to explain, support, or  
19 provide detail with respect to an item described in general  
20 terms in the original application or make modifications for  
21 compatibility as defined in 75-20-104. Once an application  
22 is accepted as complete, its effective filing date relates  
23 back to the original date the application was filed.  
24 (3) Upon acceptance of an application and notification  
25 to the applicant as provided in subsection (1), the



1 department shall, acting as lead agency for the state and in  
 2 cooperation and coordination with other state agencies,  
 3 within 30 days thereafter, forward to the applicant and the  
 4 board in writing an estimate by 3-month periods of state  
 5 agency costs for auditing the applicant's development of an  
 6 environmental assessment and for the department's  
 7 preparation of an environmental impact statement.

8 (4) Upon acceptance of an application and notification  
 9 of the applicant as provided in subsection (1), the  
 10 department shall, acting as lead agency for the state and in  
 11 cooperation and coordination with other state agencies, meet  
 12 with the applicant within 30 days thereafter to review the  
 13 environmental study plan to be submitted for bids and select  
 14 potential contractors who are acceptable to the department  
 15 and applicant. The department shall submit to bid contracts  
 16 for performance of the environmental studies and development  
 17 of an environmental assessment. Based upon the bids  
 18 received, the applicant and department shall thereafter  
 19 agree upon the party hired to undertake the performance of  
 20 the contract consistent with the study plan. If the  
 21 department and the applicant are unable to agree as to the  
 22 study plan, the list of bidders, the contractor, or any  
 23 other matter related to the environmental assessment of the  
 24 application, the applicant may request a hearing by the  
 25 board and the board shall hold a hearing within 30 days of

1 the request and shall render a decision on the matter within  
 2 30 days.

3 (5) Upon agreement between the applicant and the  
 4 department, acting as lead agency for the state, or a  
 5 decision by the board as to the contractor for the  
 6 environmental studies and the development of an  
 7 environmental assessment, the applicant shall enter into  
 8 contracts for the environmental studies and the development  
 9 of an environmental assessment. The applicant shall also  
 10 contract with the department for those costs for which the  
 11 department, acting as lead agency for the state, may charge  
 12 the applicant for its work in auditing the environmental  
 13 studies and the development of an environmental statement.  
 14 The department may collect a fee for environmental study  
 15 work as provided in this subsection.

16 (6) (a) In no case may an applicant be required to  
 17 fund environmental study work, the total costs of which  
 18 exceed 2% of any estimated cost up to \$1 million; plus 1% of  
 19 any estimated cost over \$1 million and up to \$20 million;  
 20 plus 0.5% of any estimated cost over \$20 million and up to  
 21 \$100 million; plus 0.25% of any amount of estimated cost  
 22 over \$100 million and up to \$300 million; plus 0.125% of any  
 23 amount of estimated cost over \$300 million. Environmental  
 24 study work, including payments to contractors, the  
 25 department, other state agencies, or to federal agencies,

1 provided that the work being done by such agencies is valid  
 2 and useful for the applicant, for the development of an  
 3 environmental assessment, or the preparation of an  
 4 environmental impact statement, is creditable to the fee to  
 5 be collected under this subsection in relation to the  
 6 estimated cost of the facility.

7 (b) If the applicant believes that the total costs of  
 8 the studies and charges are immeasurable or exceed the  
 9 limitations provided in subsection (5)(a) above, the  
 10 applicant may request a hearing by the board and the board  
 11 shall hold a hearing within 30 days, at which time the  
 12 applicant shall present estimates of the total costs of the  
 13 studies and the estimated cost of the facility. These  
 14 estimates shall be supported by documented evidence. Within  
 15 30 days thereafter, the board shall make a decision as to  
 16 the scope and costs of the studies to be performed within  
 17 the limitations set forth in subsection (5)(a).

18 (c) The department may contract with a potential  
 19 applicant in advance of the filing of a formal application  
 20 for the development of information or provision of services  
 21 required in this chapter. Payments made to the department  
 22 under such a contract shall be credited against the costs  
 23 payable under this chapter."

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

25 "75-20-216. Study, evaluation, and report on proposed

1 facility -- assistance by other agencies. (1) Upon receipt  
 2 acceptance of an application complying with 75-20-211  
 3 through 75-20-215(1), the department, as state lead agency,  
 4 shall commence supervise an intensive study and evaluation  
 5 of the proposed facility and its effects, ~~considering~~  
 6 ~~the criteria stated in 75-20-303 and 75-20-503 and shall~~  
 7 coordinate its study and evaluation of the proposed  
 8 facility with other state agencies. Action taken by other  
 9 state agencies or by federal agencies within their special  
 10 fields of expertise shall be included within the  
 11 department's environmental impact statement and  
 12 recommendations to the board.

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

1 of the facilities.

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

12 (2) The environmental quality council and the  
 13 departments of fish and game, state lands, community  
 14 affairs, highways, and revenue shall report to the  
 15 department within 6 months following the effective date of  
 16 an application. This report shall include any action  
 17 required by any law of that agency and information relating  
 18 to the impact of the proposed facility on each department's  
 19 area of expertise. The report may include opinions as to the  
 20 advisability of granting, denying, or modifying the  
 21 certificate. The department shall allocate funds obtained  
 22 from filing fees to the departments making reports to  
 23 reimburse them for the costs of compiling information and  
 24 issuing the required reports.

25 (3) The department of health acting singly or with the

1 board of health shall within 1 year following the effective  
 2 date of an application as defined in 75-20-215(2) issue any  
 3 decision, opinion, or order required by law of the  
 4 department of health or board of health. The decision,  
 5 opinion, or order, with or without conditions, is conclusive  
 6 on all matters of air and water quality impacts under the  
 7 federal and state air and water quality statutes that the  
 8 department and board of health administer and for the  
 9 purposes of this chapter. The decision, opinion, or order of  
 10 the department and board of health satisfies the  
 11 requirements by those agencies under the Montana  
 12 Environmental Policy Act; therefore, the department and  
 13 board of health shall not prepare an environmental impact  
 14 statement separate from the one prepared, if any, by the  
 15 department. A decision by the department of health or board  
 16 of health is subject to judicial review pursuant to the air  
 17 and water statutes administered by the department of health  
 18 and board of health.

19 (4) The department shall make a report to the board  
 20 within 9 months from the effective filing date. The report  
 21 shall include a statement regarding actions taken by and  
 22 reports from other agencies pursuant to subsections (2) and  
 23 (3), an analysis prepared pursuant to the Montana  
 24 Environmental Policy Act, if any, and other pertinent  
 25 documents resulting from its study and evaluation and

1 coordination with other state agencies."

2 Section 6. Section 75-20-218, MCA, is amended to read:

3 "75-20-218. Hearing--date---location: Appointment of  
 4 hearing examiner -- prehearing conference -- hearing  
 5 procedure. Upon receipt of the department's report submitted  
 6 under 75-20-216, the board shall set a date for a hearing to  
 7 begin not more than 120 days after the receipt. Except for  
 8 these hearings--involving--applications--submitted--for  
 9 facilities--as defined in (b) and (c) of 75-20-204(7),  
 10 certification hearings shall be conducted by the board in  
 11 the county seat of Lewis and Clark County or the county in  
 12 which the facility or the greater portion thereof is to be  
 13 located. (1) Within 30 days after the department's report  
 14 has been filed with the board pursuant to 75-20-216(4), the  
 15 board shall appoint a hearing examiner who shall organize  
 16 and supervise the prehearing conference and hearing.

17 (2) Within 60 days after the department's report has  
 18 been filed with the board pursuant to 75-20-216(4), a  
 19 prehearing conference shall be held following notice to  
 20 those persons entitled to receive notice under 75-20-211.

21 (3) The hearing examiner shall set the date for a  
 22 hearing, which shall commence within 90 days after the  
 23 department's report has been filed with the board pursuant  
 24 to 75-20-216(4).

25 (4) Any studies, investigations, reports, or any other

1 documentary evidence, including that prepared by the  
 2 department, that any party wishes the board to consider or  
 3 that the board itself expects to utilize or rely upon shall  
 4 be made a part of the record. A record shall be made of the  
 5 hearing and of all testimony taken.

6 (5) The prehearing conference shall be directed toward  
 7 a determination of the issues presented by the application,  
 8 the environmental impact statement, and an identification of  
 9 the witnesses and documentary exhibits to be presented by  
 10 the active parties who intend to participate in the hearing.

11 (6) The hearing examiner shall require the active  
 12 parties to submit in writing and serve upon the other active  
 13 parties all direct testimony that they propose and any  
 14 studies, investigations, reports, or other exhibits that any  
 15 active party wishes the board to consider. Any documents  
 16 that the board itself wishes to utilize or rely on shall be  
 17 submitted and served in like manner at least 20 days prior  
 18 to the date set for the hearing. Witnesses for active  
 19 parties whose testimony is not so submitted shall not be  
 20 called by such parties except upon rebuttal, and in such  
 21 events, their testimony shall be limited to the rebuttal of  
 22 evidence presented in direct testimony.

23 (7) Public witnesses and other interested public  
 24 parties may submit written testimony to the hearing examiner  
 25 in lieu of appearance at least 20 days prior to the date set

1 for the hearing. This testimony shall be made available to  
 2 the active parties by the examiner. The testimony shall be  
 3 admitted into the record without cross-examination; but if  
 4 any active party desires cross-examination of such witnesses  
 5 after review of filed written testimony, this  
 6 cross-examination may be obtained by request for deposition  
 7 filed with the hearing examiner, who may issue a subpoena to  
 8 the witness. An active party may call such a witness in its  
 9 case with a subpoena to be issued by the hearing examiner;  
 10 provided, however, that any such witness shall be considered  
 11 an adverse witness and must be examined under the rules  
 12 applicable thereto. Any active party calling such witness  
 13 for deposition or appearance shall tender to the witness in  
 14 advance such fees and expenses as are allowable in  
 15 accordance with Rule 4 of the Montana Rules of Civil  
 16 Procedure and shall advise the hearing examiner and the  
 17 other active parties of the intention to depose or call such  
 18 a witness.

19 (8) All proceedings under this chapter are governed by  
 20 the procedures set forth in this chapter and by rules  
 21 adopted by the board. No other rules of procedure or  
 22 evidence, including the contested case procedures of the  
 23 Montana Administrative Procedure Act, apply.

24 (9) The hearing examiner may make rules designed to  
 25 exclude repetitive, redundant, or irrelevant testimony and

1 may make other rules of evidence. The hearing examiner  
 2 shall issue a prehearing order specifying the issues of fact  
 3 and of law, identifying the witnesses of the active parties,  
 4 naming the public witnesses and other interested parties who  
 5 have submitted written testimony in lieu of appearance,  
 6 outlining the order in which the hearing shall proceed, and  
 7 any other special rules to expedite the hearing which the  
 8 hearing examiner shall adopt with the approval of the board.

9 (10) At the conclusion of the hearing, the hearing  
 10 examiner shall declare the record closed and shall within 60  
 11 days of that date prepare and submit to the board proposed  
 12 findings of fact, conclusions of law, and a recommended  
 13 decision.

14 (11) The hearing examiner appointed to conduct a  
 15 certification proceeding under this chapter may not be a  
 16 member of the board or an employee of the department. The  
 17 examiner shall insure that the duration of the proceedings,  
 18 beginning with the date the department's report is filed  
 19 with the board until the recommended report and order of the  
 20 examiner are filed with the board, does not exceed 12  
 21 calendar months, unless extended by the board for good  
 22 cause."

23 Section 7. Section 75-20-219, MCA, is amended to read:  
 24 "75-20-219. Hearing--on--amendment---of---applications  
 25 Parties to certification proceeding -- waiver by failure to

1 ~~participate. On an application for an amendment of a~~  
 2 ~~certificate, the board shall hold a hearing in the same~~  
 3 ~~manner as a hearing is held on an application for a~~  
 4 ~~certificate if the proposed change in the facility would~~  
 5 ~~result in any material increase in any environmental impact~~  
 6 ~~of the facility or a substantial change in the location of~~  
 7 ~~all or a portion of the facility other than as provided in~~  
 8 ~~the alternates set forth in the application. (1) The parties~~  
 9 to a certification proceeding may include as active parties:

10 (a) the applicant;

11 (b) the department and each government agency entitled  
 12 to receive service of a copy of the application under  
 13 75-20-211(3);

14 (c) any person residing in a county whose  
 15 commissioners are entitled to receive service of a copy of  
 16 the application under 75-20-211(3); any nonprofit  
 17 organization, a majority of whose members would be  
 18 substantially affected by the application formed in whole or  
 19 in part to promote conservation or natural beauty, to  
 20 protect the environment, personal health, or other  
 21 biological values, to preserve historical sites, to promote  
 22 consumer interests, to represent commercial and industrial  
 23 groups, or to promote the orderly development of the areas  
 24 in which the facility is to be located; and

25 (d) any landowner upon whose land the preferred or

1 alternate location of the facility is located.

2 (2) Any Montana citizen and any party referred to in  
 3 (b), (c), or (d) of (1) above may participate as a public  
 4 party to the certification proceeding.

5 (3) Any party identified in (b) and (c) of (1) of this  
 6 section waives the right to be a party if the party does not  
 7 actively participate, orally or in writing, at the hearing  
 8 before the board.

9 (4) The department's participation in a hearing under  
 10 this chapter is limited to presentation of its studies,  
 11 evaluations, recommendations, transcripts of hearings, other  
 12 pertinent documents resulting from its study and  
 13 evaluations, and a final environmental impact statement  
 14 conducted pursuant to 75-20-216."

15 Section 8. Section 75-20-220, MCA, is amended to read:

16 "75-20-220. Hearing examiner --- restrictions. Decision  
 17 of board -- findings necessary for certificate -- conditions  
 18 imposed. If the board appoints a hearing examiner to conduct  
 19 any certification proceedings under this chapter, the  
 20 hearing examiner may not be a member of the board or an  
 21 employee of the department. (1) Within 60 days after the  
 22 last day of submission of the recommended decision by the  
 23 hearing examiner, the board shall make complete findings,  
 24 issue an opinion, and render a decision upon the record,  
 25 either granting or denying the application as filed or

1 granting it upon such terms, conditions, or modifications of  
 2 the construction, operation, or maintenance of the facility  
 3 as the board considers appropriate. In rendering a decision  
 4 on an application for a certificate, the board shall issue  
 5 an opinion stating its reasons for the action taken.

6 (2) Any certificate issued by the board shall include  
 7 the following:

8 (a) an environmental evaluation statement related to  
 9 the facility being certified. The statement shall include  
 10 but not be limited to analysis of the following information:

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

12 (ii) any adverse environmental effects that cannot be  
 13 avoided by issuance of the certificate;

14 (iii) problems and objections raised by other federal  
 15 and state agencies and interested groups; and

16 (iv) alternatives to the proposed facility;

17 (b) in the case of an electric, gas, or liquid  
 18 transmission line or aqueduct:

19 (i) what part, if any, of such facility or associated  
 20 facilities shall be located underground;

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

25 (iii) that the facility will serve the interests of

1 utility system economy and reliability;

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

11 (d) that the utility facility will serve the public  
 12 interest, convenience, and necessity. In determining that  
 13 the utility facility will serve the public interest,  
 14 convenience, and necessity under (1) of this section, the  
 15 board shall consider:

16 (i) the items listed in subsection (1) of this  
 17 section;

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

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

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

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

25 (3) If the board determines that the location of all

1 or a part of the proposed facility should be modified, it  
 2 may condition its certificate upon such modifications  
 3 provided that the counties and persons residing therein  
 4 affected by the modification have been given reasonable  
 5 notice on the modification.

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

9 (5) A statement signed by the applicant showing  
 10 agreement to comply with the requirements of this chapter  
 11 and conditions of the certificate."

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

13 "75-20-304. Waiver of provisions of certification  
 14 proceedings. (1) Any of the provisions described in  
 15 75-20-216 through ~~75-20-222~~ 75-20-220 and this part may be  
 16 waived by the board for good cause shown with respect to  
 17 applications filed before January 1, 1975 ~~1980~~. Applications  
 18 for certificates under this subsection must be promptly  
 19 filed.

20 (2) The board may waive compliance with any of the  
 21 provisions of 75-20-216 through ~~75-20-222~~ 75-20-220 and this  
 22 part if the applicant makes a clear and convincing showing  
 23 to the ~~board~~ public service commission at a public hearing  
 24 that an immediate, urgent need for a facility exists and  
 25 that the applicant did not have knowledge that the need for

1 the facility existed sufficiently in advance to fully comply  
 2 with the provisions of 75-20-216 through ~~75-20-222~~ 75-20-220  
 3 and this part.

4 (3) 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 or if  
 10 there exists a significant energy shortage or voltage  
 11 problem in the state or a part of it, and there exists an  
 12 immediate need for construction of a new facility or  
 13 associated facility or the relocation of a previously  
 14 existing facility or associated facility in order to promote  
 15 the public welfare."

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

18 "75-20-401. Additional requirements by other  
 19 governmental agencies not permitted after issuance of  
 20 certificate -- exceptions. (1) Notwithstanding any other  
 21 law, no state or regional agency or municipality or other  
 22 local government may require any approval, consent, permit,  
 23 certificate, or other condition for the construction,  
 24 operation, or maintenance of a facility authorized by a  
 25 certificate issued pursuant to this chapter, except that the



1 ~~state air and water quality agency or agencies shall retain~~  
 2 ~~authority which they have or may be granted to determine~~  
 3 ~~compliance of the proposed facility with state and federal~~  
 4 ~~standards and implementation plans for air and water quality~~  
 5 ~~and to enforce those standards~~ department and board of  
 6 health shall retain the sole authority to enforce permits  
 7 issued pursuant to state and federal air and water quality  
 8 statutes and this chapter and to monitor air and water  
 9 quality performance and compliance of facilities certified  
 10 under this chapter.

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

14 Section 11. Section 75-20-406, MCA, is amended to  
 15 read:

16 "75-20-406. Judicial review of board decision. (1) Any  
 17 party as defined in ~~75-20-221~~ 75-20-219 aggrieved by the  
 18 final decision of the board on an application for a  
 19 certificate may obtain judicial review of that decision by  
 20 the filing of a petition in a state district court of  
 21 competent jurisdiction.

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

25 Section 12. Section 75-20-501, MCA, is amended to

1 read:

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

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

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

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

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

1 (d) projections of the demand for the service rendered  
2 by the utility or person and explanation of the basis for  
3 those projections and a description of the manner and extent  
4 to which the proposed facilities will meet the projected  
5 demand; and

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

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

22 (4) The public service commission shall hold a public  
23 hearing on long-range plans filed under this section within  
24 60 days after such plans are filed. Within 60 days after  
25 the hearing, the public service commission shall determine

1 if the projections of demand for service are valid and if  
2 facilities or alternate facilities or a combination thereof  
3 are needed to meet the projections of demand. If so, such  
4 determinations shall be certified by the commission. These  
5 certifications shall remain in effect unless the public  
6 service commission finds evidence in subsequent long-range  
7 plans under this section to revoke the certification upon  
8 proper hearing. Once an application is filed with the  
9 department for a specific facility under this chapter, the  
10 certification of need is conclusive and cannot be revoked. A  
11 certificate of need pursuant to this section is conclusive  
12 in any condemnation proceeding."

13 Section 13. Section 75-20-503, MCA, is amended to  
14 read:

15 "75-20-503. Environmental factors evaluated. In  
16 evaluating ~~long-range plans, conducting 5-year site reviews,~~  
17 ~~and evaluating~~ applications for certificates, the board and  
18 department shall give consideration to the following list of  
19 environmental factors and may by rule add to the categories  
20 of this section:

- 21 ~~(1) energy needs;~~  
22 ~~(2) growth in demand and projections of need;~~  
23 ~~(3) availability and desirability of alternative~~  
24 ~~sources of energy;~~  
25 ~~(4) availability and desirability of alternative~~

1 ~~sources of energy in lieu of the proposed facility;~~

2 ~~(d) promotional activities of the utility which may~~

3 ~~have given rise to the need for this facility;~~

4 ~~(e) socially beneficial uses of the output of this~~

5 ~~facility, including its uses to protect or enhance~~

6 ~~environmental quality;~~

7 ~~(f) conservation activities which could reduce the~~

8 ~~need for more energy;~~

9 ~~(g) research activities of the utility of new~~

10 ~~technology available to it which might minimize~~

11 ~~environmental impacts;~~

12 ~~(2)(1) land-use land-use impacts;~~

13 ~~(a) area of land required and ultimate uses;~~

14 ~~(b) consistency with areawide state and regional land~~

15 ~~use plans;~~

16 ~~(c) consistency with existing and projected nearby~~

17 ~~land uses;~~

18 ~~(d) alternative uses of the site;~~

19 ~~(e) impact on population already in the area~~

20 ~~population attracted by construction or operation of the~~

21 ~~facility itself;~~

22 ~~(f) impact of availability of energy from this~~

23 ~~facility on growth patterns and population dispersal;~~

24 ~~(g) geologic suitability of the site or route;~~

25 ~~(h) seismic characteristics;~~

1 ~~(i) construction practices;~~

2 ~~(j) extent of erosion, scouring, wasting of land, both~~

3 ~~at site and as a result of fossil fuel demands of the~~

4 ~~facility;~~

5 ~~(k) corridor design and construction precautions for~~

6 ~~transmission lines or aqueducts;~~

7 ~~(l) scenic impacts;~~

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

9 ~~(n) impacts on important historic, architectural,~~

10 ~~archeological, and cultural areas and features;~~

11 ~~(o) extent of recreation opportunities and related~~

12 ~~compatible uses;~~

13 ~~(p) public recreation plan for the project;~~

14 ~~(q) public facilities and accommodations;~~

15 ~~(r) opportunities for joint use with energy-intensive~~

16 ~~industries or other activities to utilize the waste heat~~

17 ~~from facilities;~~

18 ~~(3)(2) water resources impacts;~~

19 ~~(a) hydrologic studies of adequacy of water supply and~~

20 ~~impact of facility on streamflow, lakes, and reservoirs;~~

21 ~~(b) hydrologic studies of impact of facilities on~~

22 ~~groundwaters;~~

23 ~~(c) cooling system evaluations, including consideration~~

24 ~~of alternatives;~~

25 ~~(d) inventory of effluents, including physical~~

1 chemical, biological, and radiological characteristics  
 2 (e) hydrologic studies of effects of effluents on  
 3 receiving waters, including mixing characteristics of  
 4 receiving waters, changed evaporation due to temperature  
 5 differentials, and effect of discharge on bottom sediments  
 6 (f) relationship to water quality standards  
 7 (g) effects of changes in quantity and quality on  
 8 water use by others, including both withdrawal and in situ  
 9 uses  
 10 (h) relationship to projected uses  
 11 (i) relationship to water rights  
 12 (j) effects on plant and animal life, including algae,  
 13 macroinvertebrates, and fish population  
 14 (k) effects on unique or otherwise significant  
 15 ecosystems, e.g., wetlands  
 16 (l) monitoring programs  
 17 (4) air quality impacts  
 18 (a) meteorology, wind direction and velocity, ambient  
 19 temperature ranges, precipitation values, inversion  
 20 occurrence, other effects on dispersion  
 21 (b) topography, factors affecting dispersion  
 22 (c) standards in effect and projected for emissions  
 23 (d) design capability to meet standards  
 24 (e) emissions and controls  
 25 (i) stack design

1 (ii) particulates  
 2 (iii) sulfur oxides  
 3 (iv) oxides of nitrogen and  
 4 (v) heavy metals, trace elements, radioactive  
 5 materials, and other toxic substances  
 6 (f) relationship to present and projected air quality  
 7 of the area  
 8 (g) monitoring programs  
 9 (5)(3) solid wastes impacts impacts  
 10 (a) solid waste inventory  
 11 (b) disposal program  
 12 (c) relationship of disposal practices to  
 13 environmental quality criteria  
 14 (d) capacity of disposal sites to accept projected  
 15 waste loadings  
 16 (6)(4) radiation impacts and  
 17 (a) land use controls over development and population  
 18 (b) wastes and associated disposal program for solid,  
 19 liquid, radioactive, and gaseous wastes  
 20 (c) analyses and studies of the adequacy of  
 21 engineering safeguards and operating procedures  
 22 (d) monitoring adequacy of devices and sampling  
 23 techniques  
 24 (7)(5) noise impacts  
 25 (a) construction period levels

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~~(b) operational levels;~~

~~(c) relationship of present and projected noise levels~~

~~to existing and potential stricter noise standards;~~

~~(d) monitoring adequacy of devices and methods."~~

Section 14. Section 75-20-1102, MCA, is amended to read:

"75-20-1102. Definitions. Unless the context clearly requires otherwise, the following definitions apply in this part:

(1) "Application" means an application for a certificate of environmental compatibility and public need under the Montana Major Facility Siting Act for only a utility facility designed for or capable of:

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

(b) producing 100 million cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of \$250,000;

(c) producing 50,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$250,000; or

(d) enriching uranium minerals.

(2) "Board" means the board of natural resources and conservation.

(3) "Certificate" means certificate of environmental compatibility and public need.

(4) "Department" means the department of natural resources and conservation."

Section 15. Repealer. Sections 75-20-221, 75-20-222, 75-20-301, and 75-20-303, MCA, are repealed.

-End-

1                   SENATE BILL NO. 514  
 2                   INTRODUCED BY ROSKIE, GRAHAM  
 3  
 4   A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5   MONTANA MAJOR FACILITY SITING ACT; BY INCLUDING A PROVISION  
 6   FOR STAY OF BOARD ORDER PENDING APPEAL WITH POSTING OF  
 7   SURETY BOND; AMENDING SECTIONS 75-20-104, 75-20-211,  
 8   75-20-213, 75-20-215, 75-20-216, 75-20-218 THROUGH  
 9   75-20-220, 75-20-304, ~~75-20-401, 75-20-406,~~ 75-20-501, AND  
 10   75-20-503, MCA; ALSO AMENDING SECTION 75-20-1102, MCA; AND  
 11   REPEALING SECTIONS 75-20-221, 75-20-222, 75-20-301, AND  
 12   75-20-303, MCA."

13  
 14   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15       Section 1. Section 75-20-104, MCA, is amended to read:  
 16       "75-20-104. Definitions. In this chapter, unless the  
 17   context requires otherwise the following definitions apply:  
 18       (1) "Addition thereto" means the installation of new  
 19   machinery and equipment which would significantly change the  
 20   conditions under which the certificate was issued.  
 21       (2) "Associated facilities" includes but is not  
 22   limited to transportation links of any kind, aqueducts,  
 23   diversion dams, transmission substations, storage ponds,  
 24   reservoirs, and any other device or equipment associated  
 25   with the production or delivery of the energy form or

1   product produced by a facility, except that the term does  
 2   not include a facility.  
 3       (3) "Board" means the board of natural resources and  
 4   conservation provided for in 2-15-3302. ~~"Board of health"~~  
 5   ~~means the board of health and environmental sciences~~  
 6   ~~provided for in 2-15-2104.~~  
 7       (4) "Certificate" means the certificate of  
 8   environmental compatibility ~~and public need~~ issued by the  
 9   board under this chapter that is required for the  
 10   construction or operation of a facility.  
 11       (5) "Commence to construct" means:  
 12       (a) any clearing of land, excavation, construction, or  
 13   other action that would affect the environment of the site  
 14   or route of a facility but does not mean changes needed for  
 15   temporary use of sites or routes for nonutility purposes or  
 16   uses in securing geological data, including necessary  
 17   borings to ascertain foundation conditions;  
 18       (b) the fracturing of underground formations by any  
 19   means if such activity is related to the possible future  
 20   development of a gasification facility or a facility  
 21   employing geothermal resources but does not include the  
 22   gathering of geological data by boring of test holes or  
 23   other underground exploration, investigation, or  
 24   experimentation;  
 25       (c) the commencement of eminent domain proceedings

1 under Title 70, chapter 30, for land or rights-of-way upon  
2 or over which a facility may be constructed;

3 (d) the relocation or upgrading of an existing  
4 facility defined by (b) or (c) of subsection (7), including  
5 upgrading to a design capacity covered by subsection (7)(b),  
6 except that the term does not include normal maintenance or  
7 repair of an existing facility.

8 (6) "Department" means the department of natural  
9 resources and conservation provided for in Title 2, chapter  
10 15, part 33. "Department of health" means the department of  
11 health and environmental sciences provided for in Title 2,  
12 chapter 15, part 21.

13 (7) "Facility" means:

14 (a) each plant, unit, or other facility and  
15 associated facilities, except for oil and gas refineries,  
16 designed for or capable of:

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

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

25 (iii) producing 25,000 barrels of liquid hydrocarbon

1 products per day or more or any addition thereto having an  
2 estimated cost in excess of \$250,000;

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

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

8 (b) each electric transmission line and associated  
9 facilities of a design capacity of more than 69 kilovolts,  
10 except that the term does not include an electric  
11 transmission line and associated facilities of a design  
12 capacity of 230 kilovolts or less and 10 miles or less in  
13 length;

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

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

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

23 (8) "Modification for compatibility" means a change in  
24 the location, design, or operation of a facility that  
25 results from wishes of affected landowners upon whose land

1 ~~the facility is located, which results from requirements of~~  
 2 ~~other government agencies or which would provide less~~  
 3 ~~environmental impact.~~

4 ~~(9)(12)~~ "Municipality" means any county or municipality  
 5 within this state.

6 ~~(9)(10)~~ "Person" means any individual, group, firm,  
 7 partnership, corporation, cooperative, association,  
 8 government subdivision, government agency, local government,  
 9 or other organization or entity.

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

14 Section 2. Section 75-20-211, MCA, is amended to read:

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

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

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

1 ~~(iii) a statement explaining the need for the facility~~  
 2 ~~information required by other state agencies listed in~~  
 3 ~~75-20-211(3);~~

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

9 (v) such other information as the applicant considers  
 10 relevant or as the board ~~and board of health~~ by rule or the  
 11 department ~~and department of health~~ by order ~~requires~~  
 12 ~~require;~~

13 ~~(vii) a copy of the certification of need from the~~  
 14 ~~public service commission issued pursuant to 75-20-501; and~~  
 15 ~~(viii) an environmental assessment study plan to satisfy~~  
 16 ~~the criteria set forth in 75-20-501.~~

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

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

25 (3) An application shall be accompanied by proof of



1 service of a copy of the application on the chief--executive  
 2 officer-of-each-municipality-and-the-head-of-each-government  
 3 agency--charged--with-the-duty-of-protecting-the-environment  
 4 or-of-planning-land-use-in-the--area county commissioners,  
 5 city or county planning boards, and federal agencies who  
 6 have responsibilities in the area or alternative areas in  
 7 which any portion of the proposed facility is to ~~may~~ be  
 8 located, ~~both as primary and as--alternatively--proposed,~~  
 9 and on the following state agencies:

10 (a) environmental quality council;

11 (b) department of fish and game;

12 (c) department of state lands;

13 (d) department of community affairs;

14 (e) department of highways; and

15 (f) department of revenue.

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

19 (5) An application shall also be accompanied by proof  
 20 that public notice thereof was given to persons residing in  
 21 the ~~municipalities--entitled--to--receive--notice--under~~  
 22 ~~subsection (3) of this section~~ area or alternative areas in  
 23 which any portion of the proposed facility may be located by  
 24 the publication of a summary of the application ~~and the date~~  
 25 ~~on or about which it is to be filed~~ in those such newspapers

1 as will generally serve substantially to inform those  
 2 persons of the application.

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

7 Section 3. Section 75-20-213, MCA, is amended to read:

8 "75-20-213. Amendment -- restrictions. (1) An  
 9 application for ~~an~~ amendment of an application or a  
 10 certificate shall be in such form and contain such  
 11 information as the board by rule or the department by order  
 12 prescribes. Notice of such an application shall be given as  
 13 set forth in (3), (4), and (5) of 75-20-211.

14 (2) If an amendment to an original application would  
 15 result in a substantial change of the original application,  
 16 such an amendment shall be considered as a new application  
 17 and a new filing fee shall be required.

18 ~~(3) The board shall determine, upon 15 days' public~~  
 19 ~~notice, whether an amendment constitutes a substantial~~  
 20 ~~change or a modification for compatibility. A modification~~  
 21 ~~for compatibility is not subject to the requirements for a~~  
 22 ~~substantial change under this chapter and rules issued~~  
 23 ~~pursuant to this chapter."~~

24 Section 4. Section 75-20-215, MCA, is amended to read:

25 "75-20-215. Filing-fee--accountability--refund--

1 use Application ~~--- environmental study --- evaluation and~~  
 2 ~~report on proposed facility --- hearings.~~ (1) ~~A fitting fee~~  
 3 ~~shall be deposited in the earmarked revenue fund for the use~~  
 4 ~~of the department in administering this chapter. The~~  
 5 ~~applicant shall pay to the department a fitting fee with the~~  
 6 ~~application, based upon the estimated cost of the facility~~  
 7 ~~according to the declining scale which follows:~~

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

9 (b) ~~3% of any estimated cost over \$1 million and up to~~  
 10 ~~\$20 million plus~~

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

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

15 (e) ~~0.25% of any amount of estimated cost over \$300~~  
 16 ~~million.~~

17 (2) ~~if an application consists of a combination of two~~  
 18 ~~or more facilities, the fitting fee shall be based on the~~  
 19 ~~total estimated cost of the combined facilities.~~

20 (3) ~~The applicant is entitled to an accounting of~~  
 21 ~~moneys expended and to a refund of that portion of the~~  
 22 ~~fitting fee not expended by the department in carrying out~~  
 23 ~~its responsibilities under this chapter.~~

24 (4) ~~The revenues derived from fitting fees shall be~~  
 25 ~~used by the department in compiling the information required~~

1 ~~for rendering a decision on a certificate and for carrying~~  
 2 ~~out its other responsibilities under this chapter with~~  
 3 ~~respect to the facility covered by the certificate for a~~  
 4 ~~period not to exceed 5 years after the certificate is issued~~  
 5 ~~for facilities defined in 75-20-104(7)(b) and (c) or not to~~  
 6 ~~exceed 10 years after the certificate is issued for~~  
 7 ~~facilities defined in 75-20-104(7)(a), (d), and (e). (1)~~  
 8 ~~Upon receipt of an application, the department shall within~~  
 9 ~~30 days notify the applicant in writing that:~~

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

12 (b) ~~the application is not in compliance and shall~~  
 13 ~~list the deficiencies in the application.~~

14 (2) ~~Upon correction of these deficiencies and~~  
 15 ~~resubmission by the applicant, the department shall within~~  
 16 ~~30 days notify the applicant in writing that the application~~  
 17 ~~is in compliance and is accepted as complete. The applicant~~  
 18 ~~may after an application is accepted submit supplemental~~  
 19 ~~material in a timely manner as requested by the department~~  
 20 ~~or as offered by the applicant to explain, support, or~~  
 21 ~~provide detail with respect to an item described in general~~  
 22 ~~terms in the original application or make modifications for~~  
 23 ~~compatibility as defined in 75-20-104. Once an application~~  
 24 ~~is accepted as complete, its effective filing date relates~~  
 25 ~~back to the original date the application was filed.~~

1 ~~(3) Upon acceptance of an application and notification~~  
 2 ~~to the applicant as provided in subsection (1), the~~  
 3 ~~department shall, acting as lead agency for the state and in~~  
 4 ~~cooperation and coordination with other state agencies,~~  
 5 ~~within 30 days thereafter, forward to the applicant and the~~  
 6 ~~board in writing an estimate by 3-month periods of state~~  
 7 ~~agency costs for auditing the applicant's development of an~~  
 8 ~~environmental assessment and for the department's~~  
 9 ~~preparation of an environmental impact statement.~~

10 ~~(4) Upon acceptance of an application and notification~~  
 11 ~~of the applicant as provided in subsection (1), the~~  
 12 ~~department shall, acting as lead agency for the state and in~~  
 13 ~~cooperation and coordination with other state agencies, meet~~  
 14 ~~with the applicant within 30 days thereafter to review the~~  
 15 ~~environmental study plan to be submitted for bids and select~~  
 16 ~~potential contractors who are acceptable to the department~~  
 17 ~~and applicant. The department shall submit to bid contracts~~  
 18 ~~for performance of the environmental studies and development~~  
 19 ~~of an environmental assessment. Based upon the bids~~  
 20 ~~received, the applicant and department shall thereafter~~  
 21 ~~agree upon the party hired to undertake the performance of~~  
 22 ~~the contract consistent with the study plan. If the~~  
 23 ~~department and the applicant are unable to agree as to the~~  
 24 ~~study plan, the list of bidders, the contractor, or any~~  
 25 ~~other matter related to the environmental assessment of the~~

1 ~~application, the applicant may request a hearing by the~~  
 2 ~~board and the board shall hold a hearing within 30 days of~~  
 3 ~~the request and shall render a decision on the matter within~~  
 4 ~~30 days.~~

5 ~~(5) Upon agreement between the applicant and the~~  
 6 ~~department, acting as lead agency for the state, or a~~  
 7 ~~decision by the board as to the contractor for the~~  
 8 ~~environmental studies and the development of an~~  
 9 ~~environmental assessment, the applicant shall enter into~~  
 10 ~~contracts for the environmental studies and the development~~  
 11 ~~of an environmental assessment. The applicant shall also~~  
 12 ~~contract with the department for those costs for which the~~  
 13 ~~department, acting as lead agency for the state, may charge~~  
 14 ~~the applicant for its work in auditing the environmental~~  
 15 ~~studies and the development of an environmental statement.~~  
 16 ~~The department may collect a fee for environmental study~~  
 17 ~~work as provided in this subsection.~~

18 ~~(6) (a) In no case may an applicant be required to~~  
 19 ~~fund environmental study work, the total costs of which~~  
 20 ~~exceed 2% of any estimated cost up to \$1 million; plus 1% of~~  
 21 ~~any estimated cost over \$1 million and up to \$20 million;~~  
 22 ~~plus 0.5% of any estimated cost over \$20 million and up to~~  
 23 ~~\$100 million; plus 0.25% of any amount of estimated cost~~  
 24 ~~over \$100 million and up to \$300 million; plus 0.125% of any~~  
 25 ~~amount of estimated cost over \$300 million. Environmental~~

1 study work, including payments to contractors, the  
 2 department, other state agencies, or to federal agencies,  
 3 provided that the work being done by such agencies is valid  
 4 and useful for the applicant, for the development of an  
 5 environmental assessment, or the preparation of an  
 6 environmental impact statement, is creditable to the fee to  
 7 be collected under this subsection in relation to the  
 8 estimated cost of the facility.

9 (b) If the applicant believes that the total costs of  
 10 the studies and charges are immeasurable or exceed the  
 11 limitations provided in subsection (5)(a) above, the  
 12 applicant may request a hearing by the board and the board  
 13 shall hold a hearing within 30 days, at which time the  
 14 applicant shall present estimates of the total costs of the  
 15 studies and the estimated cost of the facility. These  
 16 estimates shall be supported by documented evidence. Within  
 17 30 days thereafter, the board shall make a decision as to  
 18 the scope and costs of the studies to be performed within  
 19 the limitations set forth in subsection (5)(a).

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

1 Section 5. Section 75-20-216, MCA, is amended to read:  
 2 "75-20-216. Study, evaluation, and report on proposed  
 3 facility -- assistance by other agencies. (1) Upon receipt  
 4 acceptance of an application complying with 75-20-211  
 5 through 75-20-215(1), the department, as state lead agency,  
 6 shall commence supervise an intensive study and evaluation  
 7 of the proposed facility and its effects--considering--~~all~~  
 8 ~~the--criteria--listed--in--75-20-301--and--75-20-503~~ and shall  
 9 ~~coordinate its study and evaluation of the proposed~~  
 10 ~~facility with other state agencies. Action taken by other~~  
 11 ~~state agencies or by federal agencies within their special~~  
 12 ~~fields of expertise shall be included within the~~  
 13 ~~department's environmental impact statement and~~  
 14 ~~recommendations to the board.~~

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

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

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

14 (2) The environmental quality council and the  
15 departments of fish and game, state lands, community  
16 affairs, highways, and revenue shall report to the  
17 department within 6 months following the effective date of  
18 an application. This report shall include any action  
19 required by any law of that agency and information relating  
20 to the impact of the proposed facility on each department's  
21 area of expertise. The report may include opinions as to the  
22 advisability of granting, denying, or modifying the  
23 certificate. The department shall allocate funds obtained  
24 from filing fees to the departments making reports to  
25 reimburse them for the costs of compiling information and

1 issuing the required reports.

2 (3) The department of health acting singly or with the  
3 board of health shall within 1 year following the effective  
4 date of an application as defined in 75-20-215(2) issue any  
5 decision, opinion, or order required by law of the  
6 department of health or board of health. The decision,  
7 opinion, or order, with or without conditions, is conclusive  
8 on all matters of air and water quality impacts under the  
9 federal and state air and water quality statutes that the  
10 department and board of health administer and for the  
11 purposes of this chapter. The decision, opinion, or order of  
12 the department and board of health satisfies the  
13 requirements by those agencies under the Montana  
14 Environmental Policy Act; therefore, the department and  
15 board of health shall not prepare an environmental impact  
16 statement separate from the one prepared, if any, by the  
17 department. A decision by the department of health or board  
18 of health is subject to judicial review pursuant to the air  
19 and water statutes administered by the department of health  
20 and board of health.

21 (4) The department shall make a report to the board  
22 within 9 months from the effective filing date. The report  
23 shall include a statement regarding actions taken by and  
24 reports from other agencies pursuant to subsections (2) and  
25 (3); an analysis prepared pursuant to the Montana

1 Environmental Policy Act, if any, and other pertinent  
 2 documents resulting from its study and evaluation and  
 3 coordination with other state agencies."

4 Section 6. Section 75-20-218, MCA, is amended to read:

5 "75-20-218. Hearing--date-----toeetionv Appointment of  
 6 hearing examiner -- prehearing conference -- hearing  
 7 procedures Upon receipt of the department's report submitted  
 8 under 75-20-216, the board shall set a date for a hearing to  
 9 begin--not--more--than--20--days--after--the--receipts--Except--for  
 10 these--hearings---involving---applications---submitted---for  
 11 facilities--as--defined--in--(b)--and--(c)--of--75-20-104(7)v  
 12 certification hearings shall be conducted by--the--board--in  
 13 the--county--seat--of--Lewis--and--Clark--County--or--the--county--in  
 14 which--th--facility--or--the--greater--portion--thereof--is--to--be  
 15 located: (1) Within 30 days after the department's report  
 16 has been filed with the board pursuant to 75-20-216(4), the  
 17 board shall appoint a hearing examiner who shall organize  
 18 and supervise the prehearing conference and hearing.

19 (2) Within 60 days after the department's report has  
 20 been filed with the board pursuant to 75-20-216(4), a  
 21 prehearing conference shall be held following notice to  
 22 those persons entitled to receive notice under 75-20-211.

23 (3) The hearing examiner shall set the date for a  
 24 hearing, which shall commence within 90 days after the  
 25 department's report has been filed with the board pursuant

1 to 75-20-216(4).

2 (4) Any studies, investigations, reports, or any other  
 3 documentary evidence, including that prepared by the  
 4 department, that any party wishes the board to consider or  
 5 that the board itself expects to utilize or rely upon shall  
 6 be made a part of the record. A record shall be made of the  
 7 hearing and of all testimony taken.

8 (5) The prehearing conference shall be directed toward  
 9 a determination of the issues presented by the application,  
 10 the environmental impact statement, and an identification of  
 11 the witnesses and documentary exhibits to be presented by  
 12 the active parties who intend to participate in the hearing.

13 (6) The hearing examiner shall require the active  
 14 parties to submit in writing and serve upon the other active  
 15 parties all direct testimony that they propose and any  
 16 studies, investigations, reports, or other exhibits that any  
 17 active party wishes the board to consider. Any documents  
 18 that the board itself wishes to utilize or rely on shall be  
 19 submitted and served in like manner at least 20 days prior  
 20 to the date set for the hearing. Witnesses for active  
 21 parties whose testimony is not so submitted shall not be  
 22 called by such parties except upon rebuttal, and in such  
 23 event, their testimony shall be limited to the rebuttal of  
 24 evidence presented in direct testimony.

25 (7) Public witnesses and other interested public

1 parties may submit written testimony to the hearing examiner  
 2 in lieu of appearance at least 20 days prior to the date set  
 3 for the hearing. This testimony shall be made available to  
 4 the active parties by the examiner. The testimony shall be  
 5 admitted into the record without cross-examination; but if  
 6 any active party desires cross-examination of such witnesses  
 7 after review of filed written testimony, this  
 8 cross-examination may be obtained by request for deposition  
 9 filed with the hearing examiner, who may issue a subpoena to  
 10 the witness. An active party may call such a witness in its  
 11 case with a subpoena to be issued by the hearing examiner;  
 12 provided, however, that any such witness shall be considered  
 13 an adverse witness and must be examined under the rules  
 14 applicable thereto. Any active party calling such witness  
 15 for deposition or appearance shall tender to the witness in  
 16 advance such fees and expenses as are allowable in  
 17 accordance with Rule 4 of the Montana Rules of Civil  
 18 Procedure and shall advise the hearing examiner and the  
 19 other active parties of the intention to depose or call such  
 20 a witness.

21 (8) All proceedings under this chapter are governed by  
 22 the procedures set forth in this chapter and by rules  
 23 adopted by the board. No other rules of procedure or  
 24 evidence, including the contested case procedures of the  
 25 Montana Administrative Procedure Act, apply.

1 (9) The hearing examiner may make rules designed to  
 2 exclude repetitive, redundant, or irrelevant testimony and  
 3 may make other rules of evidence. The hearing examiner  
 4 shall issue a prehearing order specifying the issues of fact  
 5 and of law, identifying the witnesses of the active parties,  
 6 naming the public witnesses and other interested parties who  
 7 have submitted written testimony in lieu of appearance,  
 8 outlining the order in which the hearing shall proceed, and  
 9 any other special rules to expedite the hearing which the  
 10 hearing examiner shall adopt with the approval of the board.

11 (10) At the conclusion of the hearing, the hearing  
 12 examiner shall declare the record closed and shall within 60  
 13 days of that date prepare and submit to the board proposed  
 14 findings of fact, conclusions of law, and a recommended  
 15 decision.

16 (11) The hearing examiner appointed to conduct a  
 17 certification proceeding under this chapter may not be a  
 18 member of the board or an employee of the department. The  
 19 examiner shall insure that the duration of the proceedings,  
 20 beginning with the date the department's report is filed  
 21 with the board until the recommended report and order of the  
 22 examiner are filed with the board, does not exceed 12  
 23 calendar months, unless extended by the board for good  
 24 cause."

25 Section 7. Section 75-20-219, MCA, is amended to read:

1       \*75-20-219. ~~Hearing on amendment of application~~  
2 ~~Parties to certification proceeding -- waiver by failure to~~  
3 ~~participate. On an application for an amendment of a~~  
4 ~~certificate the board shall hold a hearing in the same~~  
5 ~~manner as a hearing is held on an application for a~~  
6 ~~certificate if the proposed change in the facility would~~  
7 ~~result in any material increase in any environmental impact~~  
8 ~~of the facility or a substantial change in the location of~~  
9 ~~all or a portion of the facility other than as provided in~~  
10 ~~the alternates set forth in the application. (1) The parties~~  
11 ~~to a certification proceeding may include as active parties:~~  
12       (a) the applicant;  
13       (b) the department and each government agency entitled  
14 to receive service of a copy of the application under  
15 75-20-211(3);  
16       (c) any person residing in a county whose  
17 commissioners are entitled to receive service of a copy of  
18 the application under 75-20-211(3); any nonprofit  
19 organization, a majority of whose members would be  
20 substantially affected by the application formed in whole or  
21 in part to promote conservation or natural beauty; to  
22 protect the environment, personal health, or other  
23 biological values; to preserve historical sites; to promote  
24 consumer interests; to represent commercial and industrial  
25 groups; or to promote the orderly development of the areas

1       in which the facility is to be located; and  
2       (d) any landowner upon whose land the preferred or  
3 alternate location of the facility is located.  
4       (2) Any Montana citizen and any party referred to in  
5 (b), (c), or (d) of (1) above may participate as a public  
6 party to the certification proceeding.  
7       (3) Any party identified in (b) and (c) of (1) of this  
8 section waives the right to be a party if the party does not  
9 actively participate orally or in writing at the hearing  
10 before the board.  
11       (4) The department's participation in a hearing under  
12 this chapter is limited to presentation of its studies,  
13 evaluations, recommendations, transcripts of hearings, other  
14 pertinent documents resulting from its study and  
15 evaluations, and a final environmental impact statement  
16 conducted pursuant to 75-20-216."  
17       . Section 8. Section 75-20-220, MCA, is amended to read:  
18       \*75-20-220. ~~Hearing examiner -- restrictions. Decision~~  
19 ~~of board -- findings necessary for certificate -- conditions~~  
20 ~~imposed. If the board appoints a hearing examiner to conduct~~  
21 ~~any certification proceedings under this chapter the~~  
22 ~~hearing examiner may not be a member of the board or an~~  
23 ~~employee of the department. (1) Within 60 days after the~~  
24 ~~last day of submission of the recommended decision by the~~  
25 ~~hearing examiner, the board shall make complete findings,~~



1 issue an opinion, and render a decision upon the records,  
 2 either granting or denying the application as filed or  
 3 granting it upon such terms, conditions, or modifications of  
 4 the construction, operation, or maintenance of the facility  
 5 as the board considers appropriate. In rendering a decision  
 6 on an application for a certificate, the board shall issue  
 7 an opinion stating its reasons for the action taken.

8 (2) Any certificate issued by the board shall include  
 9 the following:

10 (a) an environmental evaluation statement related to  
 11 the facility being certified. The statement shall include  
 12 but not be limited to analysis of the following information:

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

14 (ii) any adverse environmental effects that cannot be  
 15 avoided by issuance of the certificate;

16 (iii) problems and objections raised by other federal  
 17 and state agencies and interested groups; and

18 (iv) alternatives to the proposed facility;

19 (b) in the case of an electric, gas, or liquid  
 20 transmission line or aqueduct:

21 (i) what parts, if any, of such facility or associated  
 22 facilities shall be located underground;

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

1 systems; and

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

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

13 (d) that the utility facility will serve the public  
 14 interest, convenience, and necessity. In determining that  
 15 the utility facility will serve the public interests,  
 16 convenience, and necessity under (1) of this section, the  
 17 board shall consider:

18 (i) the items listed in subsection (1) of this  
 19 section;

20 (ii) the benefits to the applicant and the state  
 21 resulting from the proposed facility;

22 (iii) the effects of the economic activity resulting  
 23 from the proposed facility;

24 (iv) the effects of the proposed facility on the public  
 25 health, welfare, and safety;

1 (v) any other factors that it considers relevant.

2 (3) If the board determines that the location of all  
 3 or a part of the proposed facility should be modified, it  
 4 may condition its certificate upon such modifications,  
 5 provided that the counties and persons residing therein  
 6 affected by the modification have been given reasonable  
 7 notice on the modification.

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

11 (5) A statement signed by the applicant showing  
 12 agreement to comply with the requirements of this chapter  
 13 and conditions of the certificate."

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

15 "75-20-304. Waiver of provisions of certification  
 16 proceedings. (1) Any of the provisions described in  
 17 75-20-216 through ~~75-20-222~~ 75-20-220 and this part may be  
 18 waived by the board for good cause shown with respect to  
 19 applications filed before January 1, ~~1976~~ 1980. Applications  
 20 for certificates under this subsection must be promptly  
 21 filed.

22 (2) The board may waive compliance with any of the  
 23 provisions of 75-20-216 through ~~75-20-222~~ 75-20-220 and this  
 24 part if the applicant makes a clear and convincing showing  
 25 to the board public service commission at a public hearing

1 that an immediate, urgent need for a facility exists and  
 2 that the applicant did not have knowledge that the need for  
 3 the facility existed sufficiently in advance to fully comply  
 4 with the provisions of 75-20-216 through ~~75-20-222~~ 75-20-220  
 5 and this part.

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

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

20 "75-20-401. Additional requirements by other  
 21 governmental agencies not permitted after issuance of  
 22 certificate -- exceptions. (1) Notwithstanding any other  
 23 law, no state or regional agency or municipality or other  
 24 local government may require any approval, consent, permit,  
 25 certificate, or other condition for the construction,

1 operation, or maintenance of a facility authorized by a  
 2 certificate issued pursuant to this chapter, except that the  
 3 ~~state air and water quality agency or agencies shall retain~~  
 4 ~~authority which they have or may be granted to determine~~  
 5 ~~compliance of the proposed facility with state and federal~~  
 6 ~~standards and implementation plans for air and water quality~~  
 7 ~~and to enforce these standards~~ department and board of  
 8 health shall retain the sole authority to enforce permits  
 9 issued pursuant to state and federal air and water quality  
 10 statutes and this chapter and to monitor air and water  
 11 quality performance and compliance of facilities certified  
 12 under this chapter.

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

16 Section 11. Section 75-20-406, MCA, is amended to  
 17 read:

18 "75-20-406. Judicial review of board decision. (1) Any  
 19 party as defined in ~~75-20-221~~ 75-20-219 aggrieved by the  
 20 final decision of the board on an application for a  
 21 certificate may obtain judicial review of that decision by  
 22 the filing of a petition in a state district court of  
 23 competent jurisdiction.

24 (2) The judicial review procedure shall be the same as  
 25 that for contested cases under the Montana Administrative

1 Procedure Act."

2 Section 12. Section 75-20-501, MCA, is amended to  
 3 read:

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

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

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

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

23 (c) a description of the efforts to involve  
 24 environmental protection and land use planning agencies in  
 25 the planning process, as well as other efforts to identify

1 and minimize environmental problems at the earliest possible  
2 stage in the planning process;

3 (d) projections of the demand for the service rendered  
4 by the utility or person and explanation of the basis for  
5 those projections and a description of the manner and extent  
6 to which the proposed facilities will meet the projected  
7 demand; and

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

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

24 (4) The public service commission shall hold a public  
25 hearing on long-range plans filed under this section within

1 60 days after such plans are filed. Within 60 days after  
2 the hearing, the public service commission shall determine  
3 if the projections of demand for service are valid and if  
4 facilities or alternate facilities or a combination thereof  
5 are needed to meet the projections of demand. If so, such  
6 determinations shall be certified by the commission. These  
7 certifications shall remain in effect unless the public  
8 service commission finds evidence in subsequent long-range  
9 plans under this section to revoke the certification upon  
10 proper hearing. Once an application is filed with the  
11 department for a specific facility under this chapter, the  
12 certification of need is conclusive and cannot be revoked. A  
13 certificate of need pursuant to this section is conclusive  
14 in any condemnation proceedings."

15 Section 13. Section 75-20-503, MCA, is amended to  
16 read:

17 "75-20-503. Environmental factors evaluated. In  
18 evaluating ~~long-range plans, conducting 5-year site reviews,~~  
19 ~~and evaluating~~ applications for certificates, the board and  
20 department shall give consideration to the following list of  
21 environmental factors and may by rule add to the categories  
22 of this section:

23 ~~(1) energy needs;~~  
24 ~~(2) growth in demand and projections of need;~~  
25 ~~(3) availability and desirability of alternative~~

1 sources-of-energy†  
 2 {c}--availability--and--desirability--of--alternative  
 3 sources-of-energy--in--ties-of-the-proposed-facility†  
 4 {d}--promotional-activities-of-the-utility--which--may  
 5 have-given-rise-to-the-need-for-this-facility†  
 6 {e}--socially-beneficial--uses--of--the-output-of-this  
 7 facility--including--its--uses--to--protect--or--enhance  
 8 environmental-quality†  
 9 {f}--conservation-activities--which--could--reduce-the  
 10 need-for-more-energy†  
 11 {g}--research-activities--of--the--utility--of--new  
 12 technology--available--to--it--which--might--minimize  
 13 environmental-impact†  
 14 {2}(1) land-use land-use impacts:†  
 15 {a}--area-of-land-required-and-ultimate-use†  
 16 {b}--consistency-with-area-wide-state-and-regional--land  
 17 use-plans†  
 18 {c}--consistency--with--existing--and--projected--nearby  
 19 land-use†  
 20 {d}--alternative-uses-of-the-site†  
 21 {e}--impact--on--population--already--in--the--area†  
 22 population--attracted--by--construction--or--operation--of--the  
 23 facility-itself†  
 24 {f}--impact--of--availability--of--energy--from--this  
 25 facility-on-growth-patterns-and-population-dispersal†

1 {g}--geologic-suitability-of-the-site-or-route†  
 2 {h}--seismologic-characteristics†  
 3 {i}--construction-practices†  
 4 {j}--extent-of-erosion-scouring-wasting-of-land--both  
 5 at-site--and--as--a--result--of--fossil-fuel-demands-of-the  
 6 facility†  
 7 {k}--corridor-design-and-construction--precautions--for  
 8 transmission-lines-or-aqueducts†  
 9 {l}--scenic-impacts†  
 10 {m}--effects--on--natural-systems-wildlife-plant-life†  
 11 {n}--impacts--on--important--historic--architectural  
 12 archeological--and-cultural--areas-and-features†  
 13 {o}--extent--of--recreation--opportunities--and-related  
 14 compatible-uses†  
 15 {p}--public-recreation-plan-for-the-project†  
 16 {q}--public-facilities-and-accommodation†  
 17 {r}--opportunities-for-joint-use-with--energy-intensive  
 18 industries--or--other--activities--to-utilize-the-waste-heat  
 19 from-facilities†  
 20 {3}(2) water resources impacts:†  
 21 {a}--hydrologic-studies-of-adequacy-of-water-supply-and  
 22 impact-of-facility-on-streamflow-lakes-and-reservoirs†  
 23 {b}--hydrologic-studies--of--impact--of--facilities--on  
 24 groundwater†  
 25 {c}--cooling-system-evaluation--including-consideration

1 of-alternatives†

2 {d}--inventory---of---effluents---including---physico†  
3 chemical†-biological†-and-radiological†-characteristics†

4 {e}--hydrologic-studies--of--effects--of--effluents--on  
5 receiving--waters†---including--mixing--characteristics--of  
6 receiving-waters†-changed--evaporation--due--to--temperature  
7 differentials†-and-effect-of-discharge-on-bottom-sediments†

8 {f}--relationship-to-water-quality-standards†

9 {g}--effects-of-changes--in--quantity--and--quality--on  
10 water--use--by-others†-including-both-withdrawal-and-in-situ  
11 uses†

12 {h}--relationship-to-projected-uses†

13 {i}--relationship-to-water-rights†

14 {j}--effects-on-plant-and-animal-life†-including-of-gov  
15 macroinvertebrates†-and-fish-population†

16 {k}--effects--on--unique---or---otherwise---significant  
17 ecosystems†-e.g.†-wetlands†

18 {l}--monitoring-program†

19 {m}--air-quality-impacts†

20 {n}--meteorology--wind--direction-and-velocity--ambient  
21 temperature---ranges†---precipitation--values†---inversion  
22 occurrence†-other-effects-on-dispersion†

23 {o}--topography--factors-affecting-dispersion†

24 {p}--standards--in--effect-and-projected-for-emissions†

25 {q}--design-capability-to-meet-standards†

1 {r}--emissions-and-controls†

2 {s}--stack-design†

3 {t}--particulates†

4 {u}--sulfur-oxides†

5 {v}--oxides-of-nitrogen†-and  
6 {w}--heavy---metals†---trace---elements†---radioactive  
7 materials†-and-other-toxic-substances†

8 {x}--relationship--to-present-and-projected-air-quality  
9 of-the-area†

10 {y}--monitoring-program†

11 {5}(3) solid wastes impacts† impacts†

12 {a}--solid-waste-inventory†

13 {b}--disposal-program†

14 {c}--relationship---of---disposal---practices---to  
15 environmental-quality-criteria†

16 {d}--capacity--of--disposal--sites--to-accept-projected  
17 waste-loadings†

18 {6}(4) radiation impacts† and

19 {a}--land-use-controls-over-development-and-population†

20 {b}--wastes-and-associated-disposal-program-for--solid†  
21 liquid†-radioactive†-and-gaseous-wastes†

22 {c}--analyses---and---studies---of---the---adequacy---of  
23 engineering-safeguards-and-operating-procedures†

24 {d}--monitoring--adequacy--of--devices---and---sampling  
25 techniques†

1 ~~ff)(1) noise impacts;~~  
 2 ~~(a) -- construction-period-levels;~~  
 3 ~~(b) -- operational-levels;~~  
 4 ~~(c) -- relationship-of-present-and-projected-noise-levels~~  
 5 ~~to-existing-and-potential-stricter-noise-standards;~~  
 6 ~~(d) -- monitoring--adequacy-of-devices-and-methods."~~

7 Section 14. Section 75-20-1102, MCA, is amended to  
 8 read:

9 "75-20-1102. Definitions. Unless the context clearly  
 10 requires otherwise, the following definitions apply in this  
 11 part:

12 (1) "Application" means an application for a  
 13 certificate of environmental compatibility and public need  
 14 under the Montana Major Facility Siting Act for only a  
 15 utility facility designed for or capable of:

16 (a) generating at 50 megawatts of electricity or more  
 17 or any addition thereto (except pollution control facilities  
 18 approved by the department of health and environmental  
 19 sciences added to an existing plant) having an estimated  
 20 cost in excess of \$250,000;

21 (b) producing 100 million cubic feet of gas per day or  
 22 more or any addition thereto having an estimated cost in  
 23 excess of \$250,000;

24 (c) producing 50,000 barrels of liquid hydrocarbon  
 25 products per day or more or any addition thereto having an

1 estimated cost in excess of \$250,000; or

2 (d) enriching uranium minerals.

3 (2) "Board" means the board of natural resources and  
 4 conservation.

5 (3) "Certificate" means certificate of environmental  
 6 compatibility and public need.

7 (4) "Department" means the department of natural  
 8 resources and conservation."

9 SECTION 15. THERE IS A NEW MCA SECTION THAT READS:

10 Order not stayed by appeal -- stay or suspension by  
 11 court -- limitations. Notwithstanding any contrary provision  
 12 in the law, the pendency of an appeal from a board order  
 13 does not automatically stay or suspend the operation of the  
 14 order. During the pendency of the appeal, the court may upon  
 15 motion by one of the parties stay or suspend, in whole or in  
 16 part, the operation of the board's orders on terms the court  
 17 considers just. The court's action must be in accordance  
 18 with the practice of courts exercising equity jurisdiction,  
 19 subject to the following limitations:

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

22 (2) No board order may be stayed or suspended without  
 23 finding that great or irreparable damage would otherwise  
 24 result to the party seeking the stay or suspension, and any  
 25 other stay or suspension of a board order must specify the

1 nature of the damage.

2 SECTION 16. THERE IS A NEW MCA SECTION THAT READS:

3 Surety bond -- other security. (1) If an order of the  
4 board is stayed or suspended, the court shall require a bond  
5 with good and sufficient surety conditioned that the party  
6 petitioning for review answer for all damages caused by the  
7 delay in enforcing the order of the board.

8 (2) The court may, in addition to or in lieu of the  
9 bond, require other further security for the payment of  
10 excess damages or charges as it considers proper.

11 SECTION 17. CODIFICATION. IT IS THE INTENT OF THE  
12 LEGISLATURE THAT SECTIONS 15 AND 16 BECOME AN INTEGRAL PART  
13 OF TITLE 75, CHAPTER 20, MCA, AND THAT THE PROVISIONS OF  
14 THAT CHAPTER APPLY TO SECTIONS 15 AND 16.

15 Section 18. Repealer. Sections 75-20-221, 75-20-222,  
16 75-20-301, and 75-20-303, MCA, are repealed.

-End-