

SENATE BILL 514

IN THE SENATE

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|-------------------|--|
| 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.   |

*Senate* BILL NO. 514

2 INTRODUCED BY Kodie Johnson

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 2-15-2104a

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        ~~t87191~~ "Municipality" means any county or municipality  
3    within this state.

4        ~~t97101~~ "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        ~~t107111~~ "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 department of health a verified joint application, in such  
16   form as the board and board of health, by rule or the  
17   department and department of health by order prescribes  
18   prescribe, containing the following information:

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

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

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

1       75-20-211(31):

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-and-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-be may be  
 6 located--both-as-primary-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 revenues.

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 metropolitan--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-fitted 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 fit--A--fitting--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 \$30-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 (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)(a)-(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, evaluations 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~~11~~, the department, as state lead agency,  
 4 shall commence supervise an intensive study and evaluation  
 5 of the proposed facility and its effects--considering--~~et~~  
 6 the--criteria--listed--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 ~~f27--Within-2-years-following-receipt-of-an-application~~  
 14 ~~for-a-facility-as-defined-in-(a)-and-(d)-of-75-20-104~~77~~-and~~  
 15 ~~for--a--facility--as--defined--in--(b)--and--(c)--of--75-20-104~~77~~,~~  
 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~~77~~--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 decisions, opinions, or order required by law of the  
 4 department of health or board of health. The decisions,  
 5 opinions, or orders, 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 decisions, opinions, 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 procedures. 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--20--days--after--the--receipt--Except for  
 8 those--hearings---involving---applications---submitted---for  
 9 facilities--as--defined--in--fb--and--fcj--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 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 proceeding,  
 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

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 alternatives 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 records,  
 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.

6 121 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 (vi) 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 its 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 75-20-224 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  
commission 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 regulations 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  
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

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 proceedings."

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     tit--energy-needs  
 22     tot--growth-in-demand-and-projections-of-need  
 23     tbt--avetability--and--desirability--of--alternative  
 24     sources-of-energy  
 25     tct--avetability--and--desirability--of--alternative

1 sources-of-energy-in-ties-of-the-proposed-facility  
 2        --promotional-activities-of-the--utility--which--may   3 have-given-rise-to-the-need-for-this-facility   4        --society--benefits--uses--of--the-output-of-this   5 facility--including--its--uses--to--protect--or--enhance   6 environmental-quality   7        --conservation--activities--which--could--reduce-the   8 need-for-more-energy   9        --research--activities--of--the--utility--of--new   10 technology---available--to--it--which--might--minimize   11 environmental-impacts   12        111 land-use impacts   13        --area-of-land-required-and-ultimate-use   14        --consistency-with-growtb-state-and-regional--land   15 use-patterns   16        --consistency--with--existing--and--projected--nearby   17 land-uses   18        --alternative-uses-of-the-site   19        --impact--on--population--already--in--the--area   20 population--attracted--by--construction--or--operation--of--the   21 facility--itself   22        --impact--of--availability--of--energy--from--this   23 facility-on-growth-patterns-and-population-disperses   24        --geologic-suitability-of-the-site-or-routes   25        --seismologic-characteristics | | | | | | | | | | | | |

1        --construction-practices   2        --extent-of-erosion--scouring--wearing-of-land--both   3 at--site--and--as--a--result--of--fossil-fuel-demands-of-the   4 facility   5        --corridor-design-and-construction--precautions--for   6 transmission-lines-or-aqueducts   7        --scenic-impacts   8        --effects--on--natural-systems--wildlife--plant-life   9        --impacts--on--important--historic--architectural--   10 archeological--and--cultural--areas--and--features   11        --extent--of--recreation--opportunities--and--related   12 competitive-uses   13        --public-recreation-plan-for-the-project   14        --public-facilities-and-accommodations   15        --opportunities-for-joint-use-with--energy-intensive   16 industries--or--other--activities--to--utilize--the--waste-heat   17 from-facilities   18        121 water resources impacts   19        --hydrologic-studies-of--adequacy-of-water-supply-and   20 impact-of-facility-on-streamflow--lakes--and--reservoirs   21        --hydrologic-studies--of--impact--of--facilities--on   22 groundwater   23        --cooling-system-evaluations--including-consideration   24 of-alternatives   25        --inventory--of--effluents--including--physical | | | | | | | | | | | | | | |

1 chemical-biological-and-redological-characteristics  
 2 (e.g--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--program  
 17 (m) --air--quality--impacts  
 18 (n) --meteorology--wind--direction--and--velocity--ambient  
 19 temperature--ranges--precipitation--values--inversion  
 20 occurrence--other--effects--on--dispersion  
 21 (o) --topography--factors--affecting--dispersion  
 22 (p) --standards--in--effect--and--projected--for--emissions  
 23 (q) --design--capability--to--meet--standards  
 24 (r) --emissions--and--controls  
 25 (s) --stack--design

1 (t) --particulates  
 2 (u) --sulfur--oxides  
 3 (v) --oxides--of--nitrogen--and  
 4 (w) --heavy--metals--trace--elements--radioactive  
 5 materials--and--other--toxic--substances  
 6 (x) --relationship--to--present--and--projected--air--quality  
 7 of--the--area  
 8 (y) --monitoring--program  
 9 (z) 11 solid wastes impacts impacts  
 10 (aa) --solid-waste--inventory  
 11 (bb) --disposal--program  
 12 (cc) --relationship--of--disposal--practices--to  
 13 environmental--quality--criteria  
 14 (dd) --capacity--of--disposal--sites--to--accept--projected  
 15 waste--loading  
 16 (ee) 11 radiation impacts impacts  
 17 (ff) --land--use--controls--over--development--and--populations  
 18 (gg) --wastes--and--associated--disposal--program--for--solid  
 19 (hh) --liquids--radioactive--and--gaseous--wastes  
 20 (ii) --analyses--and--studies--of--the--adequacy--of  
 21 engineering--safeguards--and--operating--procedures  
 22 (jj) --monitoring--adequacy--of--devices--and--sampling  
 23 techniques  
 24 (kk) 11 noise impacts impacts  
 25 (ll) --construction--period--levels

1       ~~(b) --operational-levels;~~

2       ~~(c) --relationship-of-present-and-projected-noise-levels~~  
 3       ~~to-existing-and-potential-strieter-noise-standards;~~  
 4       ~~(d) --monitoring--adequacy-of-devices-and-methods;"~~

5       Section 14. Section 75-20-1102, MCA, is intended 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 Kathy 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 2-15-2104a  
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 impacts

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(31)

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-and-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-primary-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 -- 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 fitting 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) --- 0.25% of any amount of estimated cost over \$300  
 14      million.  
 15        (f) --- If an application consists of a combination of two  
 16      or more facilities, the fitting 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      fitting fee not expended by the department in carrying out  
 21      its responsibilities under this chapter.  
 22        (h) --- The revenues derived from fitting 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)(a), (d) and (e).  
 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        (c) 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        (d) 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~~111~~, the department, as state lead agency,  
 4 shall commence supervising an intensive study and evaluation  
 5 of the proposed facility and its effects--considering--~~et~~  
 6 the--~~et~~territories--~~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 boards.

13 (2) Within 2 years following receipt of an application  
 14 for a facility as defined in (a) and (d) of 75-20-104~~77~~ and  
 15 for a facility as defined in (b) and (c) of 75-20-104~~77~~  
 16 which is more than 30 miles in length and within 2 years for  
 17 a facility as defined in (b) and (c) of 75-20-104~~77~~ 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                 (f3) 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                 (f2) 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                 (f3) 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                 (f4) 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      (f3), 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 those 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 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 boards. No other rules of procedure or  
 22 evidences, 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 facts, 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 proceeding,  
 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

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 75-20-216a.  
 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 parts, 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 (6) 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 needs, 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 decisions. (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 reads:  
 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 regulations, 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 hearings, 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 proceedings."

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     ~~tit--energy-needs~~  
 22     ~~tot--growth-in-demand-and-projections-of-need~~  
 23     ~~tot--avaiability--and--desirability--of--alternative~~  
 24     ~~sources-of-energyt~~  
 25     ~~tot--avaiability--and--desirability--of--alternative~~

1    sources-of-energy-in-item-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 mitigate  
 11   environmental impacts;  
 12        (h) land-use land-use impacts;  
 13        (a) area of land required and ultimate uses  
 14        (b) consistency with area-wide 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) seismologic 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   archaeological 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        (s) water resources impacts;  
 19        (t) hydrologic studies of adequacy of water supply and  
 20   impact of facility on streamflow, lakes, and reservoirs;  
 21        (u) hydrologic studies of impact of facilities on  
 22   groundwaters;  
 23        (v) cooling systems evaluation including consideration  
 24   of alternatives;  
 25        (w) inventory of effluents, including physical

1 chemical-biological-and-radioactive-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--standard  
 7      (g) effects--of--changes--in--quantity--and--quality--on  
 8 water--use--by--others--including--both--withdrawal--and--in-situ  
 9 use  
 10      (h) relationship--to--projected--use  
 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--program  
 17      (m) air--quality--impact  
 18      (n) meteorology--wind--direction--and--velocity--ambient  
 19 temperature--ranges--precipitation--values--inversion  
 20 occurrence--other--effects--on--dispersion  
 21      (o) topography--factors--affecting--dispersion  
 22      (p) standards--in--effect--and--projected--for--emission  
 23      (q) design--capability--to--meet--standard  
 24      (r) emissions--and--control  
 25      (s) stack--design

1      (t) particulates  
 2      (u) sulfur--oxides  
 3      (v) oxides--of--nitrogen--and  
 4      (w) heavy--metals--trace--elements--radioactive  
 5 materials--and--other--toxic--substances  
 6      (x) relationship--to--present--and--projected--air--quality  
 7 of--the--area  
 8      (y) monitoring--program  
 9      (z) solid wastes impacts  
 10      (aa) solid--waste--inventory  
 11      (bb) disposal--program  
 12      (cc) relationship--of--disposal--practices--to  
 13 environmental--quality--criteria  
 14      (dd) capacity--of--disposal--sites--to--accept--projected  
 15 waste--loading  
 16      (ee) radiation impacts  
 17      (ff) land-use--controls--over--development--and--population  
 18      (gg) wastes--and--associated--disposal--program--for--solid  
 19 liquids--radioactive--and--gaseous--wastes  
 20      (hh) analyses--and--studies--of--the--adequacy--of  
 21 engineering--safeguards--and--operating--procedures  
 22      (ii) monitoring--adequacy--of--devices--and--sampling  
 23 techniques  
 24      (jj) noise impacts  
 25      (kk) construction--period--levels

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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. Repeater. 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 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 21a.

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 (18) "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 ~~§87191~~ "Municipality" means any county or municipality  
 5 within this state.

6 ~~§87101~~ "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 ~~§87111~~ "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~~ 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 prescribes, 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 requires;

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

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-and-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 revenues.

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 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 dectincting scale which follows:

8        (a) -- 2% of any estimated cost up to \$1-million plus  
 9        (b) -- 2% 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 to \$200-million plus  
 12      (d) -- 0.25% of any amount of estimated cost -- over \$200 million and up to \$300-million plus  
 13      (e) -- 0.25% of any amount of estimated cost over \$300 million.

14        (2) -- If an application consists of a combination of two or more facilities, the fitting fee shall be -- based -- on -- the total estimated cost of the combined facilities.

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

16        (4) -- The revenues derived from -- fitting -- fees -- shall -- be used by the department in compiling the information required

1 for -- rendering -- a decision on a certificate and for carrying out its -- other -- responsibilities -- under -- this -- chapter -- with respect -- to -- the facility -- covered by the certificate for a period not to exceed 5 years after the certificate is issued for facilities defined in 75-20-104(f)(b) and (c) or not to exceed 10 years after the certificate is issued for facilities defined in 75-20-104(f)(a) -- (d) -- and -- (e). 11  
 12 Upon receipt of an application, the department shall within 13 30 days notify the applicant in writing that:  
 13        (a) the application is in compliance and is accepted as complete; or  
 14        (b) the application is not in compliance and shall list the deficiencies in the application.  
 15        (c) Upon correction of these deficiencies and resubmission by the applicant, the department shall within 16 30 days notify the applicant in writing that the application is in compliance and is accepted as complete. The applicant may after an application is accepted submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, supports or provide detail with respect to an item described in general terms in the original application or make modifications for compatibility as defined in 75-20-104. Once an application is accepted as complete, its effective filing date relates 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) 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 supervising an intensive study and evaluation  
 7 of the proposed facility and its effects--considering--at  
 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 --Within 2 years following receipt of an application  
 16 for a facility as defined in (a) 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 report.

14 (4) 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 decisions, opinions, 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----location: Appointment of  
 6 hearing examiner-- prehearing conference-- hearing  
 7 procedure. 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--120--days--after--the--receipt--Except--for  
 10 those--hearings---involving---applications---submitted---for  
 11 facilities--as--defined--in--(b)--and--(c)--of--75-20-104(7);  
 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 the 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 (i) 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 (ii) 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 (iii) 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 events, their testimony shall be limited to the rebuttal of  
 24 evidence presented in direct testimony.

25 (iv) 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 facts, 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 proceeding,  
 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---applications  
 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        (i) the applicant;  
 13        (ii) the department and each government agency entitled  
 14      to receive service of a copy of the application under  
 75-20-211(3);  
 16        (iii) 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        (i) any landowner upon whose land the preferred or  
 3       alternate location of the facility is located;  
 4        (ii) Any Montana citizen and any party referred to in  
 5       (b)(i), (b)(2), or (b)(3) of (1) above may participate as a public  
 6       party to the certification proceeding;  
 7        (iii) Any party identified in (b) and (c)(1) 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        (iv) 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 75-20-216a.  
 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, operations, 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 part, 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 (iv) 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 (v) that the utility facility will serve the public  
 14 interest, convenience, and necessity. In determining that  
 15 the utility facility will serve the public interest,  
 16 convenience, and necessity under (iv) 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 modifications.

8        (4) Considerations of need, public needs 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, 1975 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 competence-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 75-20-223 75-20-212 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 commission 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 regulation, 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 proceeding."

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 ~~tot--energy-needs+~~  
 24 ~~tot--growth-in-demand-and-projections-of-need+~~  
 25 ~~tot--availability--and--desirability---of---alternative~~

1 sources-of-energy:  
 2        tct--availability---and---desirability--of--alternative  
 3 sources-of-energy-in-the-area-of-the-proposed-facility:  
 4        tdj--promotional-activities-of-the-utility--which--may  
 5 have-given-rise-to-the-need-for-this-facility:  
 6        tct--societal--benefits--uses--of--the-output-of-this  
 7 facility---including--its--uses--to---protect---or---enhance  
 8 environmental-quality:  
 9        tfj--conservation--activities--which--could--reduce-the  
 10 need-for-more-energy:  
 11        tgj--research--activities--of--the---utility---of---new  
 12 technology---available---to---it---which---might---minimize  
 13 environmental-impacts:  
 14        t2j11 land-use impact(s):  
 15        tct--area-of-land-required-and-ultimate-use:  
 16        tct--consistency-with-area-wide-state-and-regional--land  
 17 use-plans:  
 18        tct--consistency--with--existing--and--projected-nearby  
 19 land-uses:  
 20        tdj--alternative-uses-of-the-site:  
 21        tct--impact--on--population--already---to---the---area--  
 22 population--attracted--by--construction--or--operation--of--the  
 23 facility--itself:  
 24        tct--impact--of--availability--of--energy---from---this  
 25 facility-on-growth-patterns-and-population-dispersal:

1        tct--geologic-suitability-of-the-site-or-route:  
 2        thj--seismologic-characteristics:  
 3        tct--construction-practices:  
 4        tct--extent-of-erosion--scouring--wasting-of--land--both  
 5 at--site--and--as--a--result--of--fossil-fuel-demands--of--the  
 6 facility:  
 7        tkj--corridor-design-and-construction--precautions--for  
 8 transmission-lines-or--aqueducts:  
 9        tct--scenic-impacts:  
 10        tmj--effects--on--natural--systems--wildlife--plant--trees:  
 11        tct--impacts--on--important--historic--architectural--  
 12 archeological--and--cultural--areas--and--features:  
 13        tct--extent--of--recreation--opportunities--and--related  
 14 compatible-uses:  
 15        tpj--public-recreation-plan-for-the-project:  
 16        tct--public-facilities-and-accommodations:  
 17        trj--opportunities-for-joint-use-with--energy-intensive  
 18 industries--or--other--activities--to-utilize-the-waste-heat  
 19 from-facilities:  
 20        t3j121 water resources impacts:  
 21        tct--hydrologic-studies-of--adequacy-of-water-supply-and  
 22 impact-of-facility-on-streamflow--takes--and--reservoirs:  
 23        tct--hydrologic-studies--of--impact--of--facilities--on  
 24 groundwater:  
 25        tct--cooling-system-evaluations--including-consideration

1 of-alternatives  
 2        --inventory---of---effluents---including--physical-   3 chemical--biological--and--radiological--characteristics   4        --hydrologic--studies--of--effects--of--effluents--on   5 receiving--waters---including--mixing--characteristics--of   6 receiving-waters--changed--evaporation--due--to--temperature   7 differentiates--and--effect--of--discharge--on--bottom--sediments   8        --relationship--to--water--quality--standards   9        --effects--of--changes--in--quantity--and--quality--on   10 water--use--by--others--including--both--withdrawal--and--in-situ   11 use   12        --relationship--to--projected--use   13        --relationship--to--water--rights   14        --effects--on--plant--and--animal--life--including--algae--   15 macroinvertebrates--and--fish--population   16        --effects--on--unique--or--otherwise--significant   17 ecosystems--e.g.--wetlands   18        --monitoring--program   19        --air--quality--impacts   20        --meteorology--wind--direction--and--velocity--ambient   21 temperature--ranges--precipitation--values--inversion   22 occurrence--other--effects--on--dispersion   23        --topography--factors--affecting--dispersion   24        --standards--in--effect--and--projected--for--emission   25        --design--capability--to--meet--standards | | | | | | | | | | | | | |

1        --emissions--and--controls   2        --stack--design   3        --particulates   4        --sulfur--oxide   5        --oxides--of--nitrogen--and   6        --heavy--metals,--trace--elements,---radioactive   7 materials--and--other--toxic--substances   8        --relationship--to--present--and--projected--air--quality   9 of--the--area   10        --monitoring--program   11        --solid wastes impact+ impactai   12        --solid-waste--inventory   13        --disposal--program   14        --relationship--of--disposal--practices--to   15 environmental--quality--criteria   16        --capacity--of--disposal--sites--to--accept--projected   17 waste--loading   18        --radiation impactst+ and   19        --land-use--controls--over--development--and--population   20        --wastes--and--associated--disposal--program--for--solid   21 liquids--radioactive--and--gaseous--wastes   22        --analyses--and--studies--of--the--adequacy--of   23 engineering--safeguards--and--operating--procedures   24        --monitoring--adequacy--of--devices--and--sampling   25 techniques | | | | | | | | | | | | | | | | | |

1       ~~77(5)~~ noise impacts;  
 2       ~~at~~--construction-period-levels;  
 3       ~~at~~--operational-levels;  
 4       ~~the~~--relationship-of-present-and-projected-noise-levels  
 5       to-existing-and-potential-stricter-noise-standards;  
 6       ~~the~~--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 15a. 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-