

House Bill 236

In The House

January 15, 1981	Introduced and referred to Committee on Natural Resources.
January 20, 1981	Fiscal note requested.
January 26, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

AHOUSE BILL NO. 2362

2 INTRODUCED BY Shire

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS
6 75-20-104, 75-20-106, 75-20-216, 75-20-219, AND 75-20-503,
7 MFA."

SECTION 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 76-20-104, MCA, is amended to read:
11 "76-20-104. Definitions. In this chapter, unless the
12 context requires otherwise, the following definitions apply:

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

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

19 (3) "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 (4) "Board" means the board of natural resources and
2 conservation provided for in 2-15-3302.

3 (5) "Board of health" means the board of health and
4 environmental sciences provided for in 2-15-2104.

5 (6) "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.

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

6 (8) "Department" means the department of natural
7 resources and conservation provided for in Title 2, chapter
8 15, part 33.

9 (9) "Department of health" means the department of
10 health and environmental sciences provided for in Title 2,
11 chapter 15, part 21.

12 (10) "Facility" means:

13 (a) except for crude oil and natural gas refineries,
14 and facilities and associated facilities designed for or
15 capable of producing, gathering, processing, transmitting,
16 transporting, or distributing crude oil or natural gas, each
17 plant, unit, or other facility and associated facilities
18 designed for or capable of:

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

24 (ii) producing 25 million cubic feet or more of gas
25 derived from coal per day or any addition thereto having an

1 estimated cost in excess of \$250,000;
2 (iii) producing 25,000 barrels of liquid hydrocarbon
3 products per day or more or any addition thereto having an
4 estimated cost in excess of \$250,000;
5 (iv) enriching uranium minerals or any addition thereto
6 having an estimated cost in excess of \$250,000; or
7 (v) utilizing, refining, or converting 500,000 tons of
8 coal per year or more or any addition thereto having an
9 estimated cost in excess of \$250,000;
10 (b) each electric transmission line and associated
11 facilities of a design capacity of more than 69 115
12 kilovolts, except that the term does not include an electric
13 transmission line and associated facilities of a design
14 capacity of 230 kilovolts or less and 10 miles or less in
15 length;
16 (c) each pipeline and associated facilities designed
17 for or capable of transporting gas (except for natural gas),
18 water, or liquid hydrocarbon products from or to a facility
19 located within or without this state of the size indicated
20 in subsection (10)(a) of this section;
21 (d) any use of geothermal resources, including the use
22 of underground space in existence or to be created, for the
23 creation, use, or conversion of energy, designed for or
24 capable of producing geothermally derived power equivalent
25 to 25 million Btu per hour or more or any addition thereto

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

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

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

7 (12) "Transmission substation" means any structure,
8 device, or equipment assemblage, commonly located and
9 designed for voltage regulation, circuit protection, or
10 switching necessary for the construction or operation of a
11 proposed transmission line.

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

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

17 "75-20-106. Contracts for information ~~==~~ credit
18 against ~~fee~~. (1) The department may contract with a
19 potential applicant under this chapter in advance of the
20 filing of a formal application for the development of
21 information or provision of services required hereunder.

22 (2) Payments made to the department under such a
23 contract shall be credited against the fee payable
24 hereunder.

25 (3) A potential applicant shall receive credit against

1 ~~the fee payable under 75-20-215 for the development of
2 information or provision of services required hereunder or
3 required for the preparation of an environmental impact
4 statement under the National Environmental Policy Act of
5 1969."~~

6 Section 3. Section 75-20-216, MCA, is amended to read:
7 "75-20-216. Study, evaluation, and report on proposed
8 facility -- assistance by other agencies. (1) After receipt
9 of an application, the department and department of health
10 shall within 90 45 days notify the applicant in writing
11 that:

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

14 (b) the application is not in compliance and list the
15 deficiencies therein; and upon correction of these
16 deficiencies and resubmission by the applicant, the
17 department and department of health shall within 30 15 days
18 notify the applicant in writing that the application is in
19 compliance and is accepted as complete.

20 (2) Upon receipt of an application complying with
21 75-20-211 through 75-20-215, and this section, the
22 department shall commence an intensive study and evaluation
23 of the proposed facility and its effects, considering all
24 applicable criteria listed in 75-20-301 and 75-20-303 and
25 the department of health shall commence a study to enable it

1 or the board of health to issue a decision, opinion, order,
2 certification, or permit as provided in subsection (3). The
3 department and department of health shall use, to the extent
4 they consider applicable, valid and useful existing studies
5 and reports submitted by the applicant or compiled by a
6 state or federal agency.

7 (3) The department of health shall within ~~1~~-year 6
8 months following the date of acceptance of an application,
9 and the board of health, if applicable, within an additional
10 6 3 months, issue any decision, opinion, order,
11 certification, or permit required by state or federal air
12 and water quality laws and this chapter. The department of
13 health and the board of health shall determine compliance
14 with air and water quality standards and implementation
15 plans for the primary and reasonable alternate locations in
16 their decision, opinion, order, certification, or permit.
17 The decision, opinion, order, certification, or permit, with
18 or without conditions, is conclusive on all matters of air
19 and water quality impacts under the federal and state air
20 and water quality statutes that the department of health and
21 board of health administer, and any of the criteria
22 specified in 75-20-503(3) and (4) that are a part of the
23 determinations made under federal and state air and water
24 quality statutes. Although the decision, opinion, order,
25 certification, or permit issued under this subsection is

1 conclusive, the board retains authority to make the
2 determination required under 75-20-301(2)(c). The decision,
3 opinion, order, certification, or permit of the department
4 of health or the board of health satisfies the review
5 requirements by those agencies and shall be acceptable in
6 lieu of an environmental impact statement under the Montana
7 Environmental Policy Act. A copy of the decision, opinion,
8 order, certification, or permit shall be served upon the
9 department and the board and shall be utilized as part of
10 their final site selection process. Prior to the issuance of
11 a preliminary decision by the department of health and
12 pursuant to rules adopted by the board of health, the
13 department of health shall provide an opportunity for public
14 review and comment. A decision by the department of health
15 or board of health is subject to appellate review pursuant
16 to the air and water quality statutes administered by the
17 department of health and board of health.

18 (4) Within ~~22~~-months ~~1~~-year following acceptance of an
19 application for a facility as defined in (a) and (d) of
20 75-20-104(10) and for a facility as defined in (b) and (c)
21 of 75-20-104(10) which is more than 30 miles in length and
22 within ~~1~~-year 6 months for a facility as defined in (b) and
23 (c) of 75-20-104(10) which is 30 miles or less in length,
24 the department shall make a report to the board which shall
25 contain the department's studies, evaluations,

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

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

19 Section 4. Section 75-20-219, MCA, is amended to read:

20 "75-20-219. Amendments to a certificate. (1) Within 30
 21 days after notice of an amendment to a certificate is given
 22 as set forth in 75-20-213(1), including notice to all active
 23 parties to the original proceeding, the department shall
 24 determine whether the proposed change in the facility would
 25 result in any material increase in any environmental impact

1 of-the-facility-or-a-substantial-change-in-the-location-of
 2 another portion of the facility other than as provided in
 3 the alternates set forth in the original application. If the
 4 department determines that the proposed change would result
 5 in any material increase in any environmental impact of the
 6 facility or a substantial change in the location of another
 7 portion of the facility, the board shall hold a hearing in
 8 the same manner as a hearing is held on an application for a
 9 certificate. After hearing, the board shall grant, deny, or
 10 modify the amendment with such conditions as it deems
 11 appropriate.

12 (2) In those cases where the department determines
 13 that the proposed change in the facility would not result in
 14 any material increase in any environmental impact or would
 15 not be a substantial change in the location of another
 16 portion of the facility, the board shall automatically grant
 17 the amendment either as applied for or upon such terms or
 18 conditions as the board considers appropriate unless the
 19 department's determination is appealed to the board within
 20 15 days after notice of the department's determination is
 21 given.

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

25 (4) If an amendment is required to a certificate which

1 would-affect---amend---alter---or-modify---a---decision---opinions
 2 order---certification---or-permit-issued-by-the-department-of
 3 health-or-board-of-health---such-amendment-must-be---processed
 4 under-the-applicable-statutes-administered-by-the-department
 5 of---health---or---board---of---health. Upon an application for an
 6 amendment to a certificate, if a proposed change in the
 7 facility or in the alternates set forth in the application
 8 is requested, the applicant and the board shall discuss the
 9 proposed change in light of whether or not it will result in
 10 a material increase in any environmental impact of the
 11 facility. The board may then, subject to judicial review,
 12 impose conditions upon the certificate consistent with the
 13 policy of the Montana Major Facility Siting Act."

14 Section 5. Section 75-20-503, MCA, is amended to 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, where applicable, and may by rule add
 20 to the categories of this section:

21 (1) energy needs†
 22 ††---growth-in-demand-and-projections-of-need†
 23 †††---availability---and---desirability---of---alternative
 24 sources-of-energy†
 25 †††---availability---and---desirability---of---alternative

1 sources-of-energy-in-lieu-of-the-proposed-facility†
 2 ††---promotion-of-activities-of-the-utility---which---may
 3 have-given-rise-to-the-need-for-this-facility†
 4 †††---society---beneficiet---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 (2) land use impacts* impact†
 13 ††---area-of-land-required-and-ultimate-use†
 14 †††---consistency-with-area-wide-state-and-regionet---land
 15 use-plans†
 16 ††---consistency---with---existing---and---projected-nearby
 17 land-use†
 18 ††---alternative-uses-of-the-sites†
 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-disperset†
 24 †††---geologic-suitability-of-the-site-or-route†
 25 †††---seismologic-characteristics†

1 (f) -- construction practices
 2 (fj) -- extent of erosion, securing, wasting of land, both
 3 at site and as a result of fossil fuel demands of the
 4 facility;
 5 (fk) -- corridor design and construction -- precautions -- for
 6 transmission lines or aqueducts;
 7 (fl) -- scenic impacts;
 8 (fm) -- effects -- on natural systems, wildlife, plant life;
 9 (fn) -- impacts -- on -- important -- historic -- architectural,
 10 archeological, and cultural areas and features;
 11 (fo) -- extent -- of -- recreation -- opportunities -- and related
 12 compatible uses;
 13 (fp) -- public recreation plan for the project;
 14 (fq) -- public facilities and accommodations;
 15 (fr) -- opportunities for joint use with -- energy intensive
 16 industries -- or -- other -- activities -- to utilize the waste heat
 17 from facilities;
 18 (fs) -- opportunities for using public lands for -- location
 19 of -- facilities -- whenever -- as -- economically -- practicable -- as -- the
 20 use of private lands and compatible with the requirements of
 21 this section;
 22 (3) water resources impacts **impact**
 23 (fj) -- hydrologic studies of adequacy of water supply and
 24 impact of facility on streamflow, lakes, and reservoirs;
 25 (fk) -- hydrologic studies -- of -- impact -- of -- facilities -- on

1 groundwater;
 2 (fj) -- cooling system evaluation, including consideration
 3 of alternatives;
 4 (fj) -- inventory -- of -- effluents, -- including -- physical,
 5 chemical, biological, and radiological characteristics;
 6 (fj) -- hydrologic studies -- of -- effects -- of -- effluents -- on
 7 receiving -- waters, -- including -- mixing -- characteristics -- of
 8 receiving waters -- changed -- evaporation -- due -- to -- temperature
 9 differentials, -- and effect of discharge on bottom sediments;
 10 (ff) -- relationship to water quality standards;
 11 (fg) -- effects of changes -- in -- quantity -- and -- quality -- on
 12 water -- use -- by others, -- including both withdrawal and in-situ
 13 uses;
 14 (fh) -- relationship to projected uses;
 15 (fi) -- relationship to water rights;
 16 (fj) -- effects on plant and animal life, including algae,
 17 macroinvertebrates, and fish populations;
 18 (fk) -- effects on unique -- or -- otherwise -- significant
 19 ecosystems, ergo, wetlands;
 20 (fj) -- monitoring programs;
 21 (4) air quality impacts **impact**
 22 (fj) -- meteorology -- wind -- direction and velocity, ambient
 23 temperature -- ranges -- precipitation -- values -- inversion
 24 occurrence, other effects on dispersion;
 25 (fj) -- topography -- factors affecting dispersion

1 {e}--standards--in--effect-and-projected-for-emissions†
 2 {d}--design-capability-to-meet-standards†
 3 {e}--emissions-and-controls†
 4 {f}--stack-designs
 5 {t}--particulates†
 6 {t}--sulfur-oxides†
 7 {t}--oxides-of-nitrogen-and
 8 {v}--heavy---metals---trace---elements,---radioactive
 9 materials-and-other-toxic-substances†
 10 {f}--relationship--to-present-and-projected-air-quality
 11 of-the-area
 12 {g}--monitoring-program†
 13 (5) solid wastes impacts† impacts
 14 {a}--solid-waste-inventories†
 15 {b}--disposal-program†
 16 {e}--relationship----of----disposal----practices----to
 17 environmental-quality-criteria†
 18 {d}--capacity--of--disposal--sites--to-accept-projected
 19 waste-toading†
 20 (6) radiation impacts† impacts:
 21 {a}--land-use-controls-over-development-and-populations†
 22 {b}--wastes-and-associated-disposal-program-for--solid,
 23 liquids-radioactive-and-gaseous-wastes†
 24 {e}--analyses---and---studies---of---the---adequacy--of
 25 engineering-safeguards-and-operating-procedures†

1 {d}--monitoring--adequacy--of--devices---and---sampling
 2 techniques†
 3 (7) noise impacts† impacts
 4 {e}--construction-period-levels†
 5 {b}--operational-levels†
 6 {e}--relationship-of-present-and-projected-noise-levels
 7 to-existing-and-potential-stricter-noise-standards†
 8 {d}--monitoring--adequacy-of-devices-and-methods†

-End-

STATE OF MONTANA

REQUEST NO. 157-81

FISCAL NOTE

Form BD-15

compliance with a written request received January 20, 1981, there is hereby submitted a Fiscal Note
House Bill 236 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).
background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

House Bill 236 amends sections of the Major Facility Siting Act relating to size of electrical transmission facilities, credits against application filing fees, notification, times for preparation of reports, amendments to a certificate, and environmental factors evaluated.

FISCAL IMPACT

Functions performed under the Major Facility Siting Act by the Department of Natural Resources and Conservation under current legislation are primarily funded by earmarked funds collected under filing fees when an application is received. The proposed legislation would result in a shift from earmarked to general funds which would require an increased general fund appropriation.

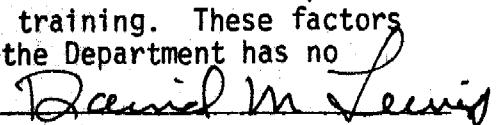
The net effect of this proposed legislation would be increasing the general fund appropriation by \$3,090,000 for fiscal year 1982, and by \$7,390,000 for fiscal year 1983.

ASSUMPTIONS

1. The credit against the filing fee that applicants will be able to apply will, in most cases, reduce the fee by 100 percent.
2. The legal sufficiency of the documents will not be affected by the reductions in preparation and notification times referred to in Section 75-20-216, and thus will not cause fiscal impacts due to litigation.
3. The 1982-83 budget estimate is based on expenditure of 100 percent of the filing fees expected to be received.
4. Long-range plans filed with the Department of Natural Resources and Conservation indicate that two power plants, three synthetic fuel plants, six hydroelectric dams, and six transmission lines subject to the siting act will be proposed in the 82-83 biennium. However, plans for these facilities may change to a number of conditions.

TECHNICAL NOTES

The reduction in preparation time of reports would necessitate an increase in permanent staffing because the times do not allow for recruitment and training. These factors are not addressed in the budget calculations above because the Department has no data which can be used as a basis for an estimate.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-81