

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.

1 HOUSE BILL NO. 236  
2 INTRODUCED BY       

3  
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 MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 75-20-104, MCA, is amended to read:  
11 "75-20-104. Definitions. In this chapter, unless the  
12 context requires otherwise, the following definitions apply:

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

16 (2) "Application" means an application for a  
17 certificate submitted in accordance with this chapter and  
18 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.

9 (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 (a) 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 90 ~~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 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 75-20-219(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 ~~all or a portion of the facility other than as provided in~~  
3 ~~the alternatives 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 all or a~~  
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 all or a~~  
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, opinion,  
 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 (a) growth in demand and projections of need;  
 23 (b) availability and desirability of alternative  
 24 sources of energy;  
 25 (c) availability and desirability of alternative

- 1 sources of energy in lieu of the proposed facility;  
 2 (d) promotional activities of the utility which may  
 3 have given rise to the need for this facility;  
 4 (e) socially beneficial uses of the output of this  
 5 facility, including its uses to protect or enhance  
 6 environmental quality;  
 7 (f) conservation activities which could reduce the  
 8 need for more energy;  
 9 (g) research activities of the utility of new  
 10 technology available to it which might minimize  
 11 environmental impact;  
 12 (2) land use impacts;  
 13 (a) areas of land required and ultimate uses;  
 14 (b) consistency with areawide state and regional land  
 15 use plans;  
 16 (c) consistency with existing and projected nearby  
 17 land uses;  
 18 (d) alternative uses of the site;  
 19 (e) impact on population already in the area  
 20 population attracted by construction or operation of the  
 21 facility itself;  
 22 (f) impact of availability of energy from this  
 23 facility on growth patterns and population dispersal;  
 24 (g) geologic suitability of the site or route;  
 25 (h) 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 archeological-and-cultural-areas-and-features†  
 11 {o}--extent--of--recreation--opportunities--and-related  
 12 compatible-uses†  
 13 {p}--public-recreation-plan-for-the-project†  
 14 {q}--public-facilities-and-accommodation†  
 15 {r}--opportunities-for-joint-use-with--energy-intensive  
 16 industries--or--other--activities--to-utilize-the-waste-heat  
 17 from-facilities†  
 18 {s}--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 {a}--hydrologic-studies-of-adequacy-of-water-supply-and  
 24 impact-of-facility-on-streamflow-takes-and-reservoirs†  
 25 {b}--hydrologic-studies--of--impact--of--facilities--on

1 groundwater†  
 2 {c}--cooling-system-evaluation-including-consideration  
 3 of-alternatives†  
 4 {d}--inventory--of--effluents--including--physical  
 5 chemical-biological-and-radiological-characteristics†  
 6 {e}--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 {f}--relationship-to-water-quality-standards†  
 11 {g}--effects-of-changes--in--quantity--and--quality--on  
 12 water--use--by--others--including-both-withdrawal-and-in-situ  
 13 uses†  
 14 {h}--relationship-to-projected-uses†  
 15 {i}--relationship-to-water-rights†  
 16 {j}--effects-on-plant-and-animal-life-including-algae  
 17 macroinvertebrates-and-fish-population†  
 18 {k}--effects--on--unique--or--otherwise--significant  
 19 ecosystems--eggs--wetlands†  
 20 {l}--monitoring-program†  
 21 (4) air quality impacts† impact:  
 22 {a}--meteorology--wind--direction-and-velocity--ambient  
 23 temperature--ranges--precipitation--values--inversion  
 24 occurrence--other-effects-on-dispersion†  
 25 {b}--topography--factors-affecting-dispersion†



1 (c)--standards--in--effect--and--projected--for--emissions†  
 2 (d)--design--capability--to--meet--standards†  
 3 (e)--emissions--and--controls†  
 4 (i)--stack--design†  
 5 (ii)--particulates†  
 6 (iii)--sulfur--oxides†  
 7 (iv)--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--inventory†  
 15 (b)--disposal--program†  
 16 (c)--relationship--of--disposal--practices--to  
 17 environmental--quality--criteria†  
 18 (d)--capacity--of--disposal--sites--to--accept--projected  
 19 waste--loadings†  
 20 (6) radiation impacts† impacts†  
 21 (a)--land--use--controls--over--development--and--population†  
 22 (b)--wastes--and--associated--disposal--program--for--solid†  
 23 liquid†--radioactive†--and--gaseous--wastes†  
 24 (c)--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 (a)--construction--period--levels†  
 5 (b)--operational--levels†  
 6 (c)--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, 19 81, there is hereby submitted a Fiscal Note for 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.

*Daniel M. Lewis*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-81