

SENATE BILL NO. 376

INTRODUCED BY S. BROWN

IN THE SENATE

February 6, 1981	Introduced and referred to Committee on Natural Resources.
February 7, 1981	Fiscal note requested.
February 11, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day.  Third reading, passed. Ayes, 39; Noes, 9. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on Natural Resources.
March 28, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.

March 31, 1981

Second reading, concurred  
in as amended.

On motion rules suspended  
and bill placed on third  
reading this day.

Third reading, concurred  
in as amended. Ayes, 61;  
Noes, 35.

#### IN THE SENATE

April 1, 1981

Returned from House with  
amendments.

April 10, 1981

Second reading, amendments  
not concurred in.

April 11, 1981

On motion Free Conference  
Committee requested.

Free Conference Committee  
appointed.

April 14, 1981

Free Conference Committee  
dissolved.

On motion new Free Conference  
Committee requested.

New Free Conference Committee  
appointed.

April 16, 1981

New Free Conference Committee  
reported.

April 17, 1981

Second reading, New Free  
Conference Committee report  
adopted.

Third reading, New Free  
Conference Committee report  
adopted. Ayes, 48; Noes, 0.  
Transmitted to House.

IN THE HOUSE

April 21, 1981

New Free Conference Committee  
report adopted.

IN THE SENATE

April 22, 1981

Returned from House.  
Sent to enrolling.

Reported correctly enrolled.

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*Steve Brown* BILL NO. 376  
 INTRODUCED BY STEVE BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE DEFINITION OF A FACILITY; INCLUDING MAJOR PIPELINES AS A FACILITY; EXPANDING EXEMPTION CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES; CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT CLOSURE; PROVIDING FOR APPLICABILITY OF SECTIONS AFFECTING MAJOR PIPELINES; AMENDING SECTIONS 75-20-104, 75-20-202, 75-20-211, 75-20-216, 75-20-218, 75-20-220, 75-20-301, 75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"75-20-104. Definitions. In this chapter, unless the

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context requires otherwise, the following definitions apply:

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

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

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

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

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

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

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or

1 other action that would affect the environment of the site  
2 or route of a facility but does not mean changes needed for  
3 temporary use of sites or routes for nonutility purposes or  
4 uses in securing geological data, including necessary  
5 borings to ascertain foundation conditions;

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

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

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

21 (8) "Department" means the department of natural  
22 resources and conservation provided for in Title 2, chapter  
23 15, part 33.

24 (9) "Department of health" means the department of  
25 health and environmental sciences provided for in Title 2,

1 chapter 15, part 21.

2 (10) "Facility" means:

3 (a) except for crude oil and natural gas refineries,  
4 and facilities and associated facilities designed for or  
5 capable of producing, gathering, processing, transmitting,  
6 transporting, or distributing crude oil or natural gas, each  
7 plant, unit, or other facility and associated facilities  
8 designed for or capable of:

9 (i) generating 50 megawatts of electricity or more or  
10 any addition thereto (except pollution control facilities  
11 approved by the department of health and environmental  
12 sciences added to an existing plant) having an estimated  
13 cost in excess of ~~\$250,000~~ \$750,000;

14 (ii) producing 25 million cubic feet or more of gas  
15 derived from coal per day or any addition thereto having an  
16 estimated cost in excess of ~~\$250,000~~ \$750,000;

17 (iii) producing 25,000 barrels of liquid hydrocarbon  
18 products per day or more or any addition thereto having an  
19 estimated cost in excess of ~~\$250,000~~ \$750,000;

20 (iv) enriching uranium minerals or any addition thereto  
21 having an estimated cost in excess of ~~\$250,000~~ \$750,000; or

22 (v) utilizing, refining, or converting 500,000 tons of  
23 coal per year or more or any addition thereto having an  
24 estimated cost in excess of ~~\$250,000~~ \$750,000;

25 (b) each electric transmission line and associated

1 facilities of a design capacity of more than 69 kilovolts,  
2 except that the term does not include an electric  
3 transmission line and associated facilities of a design  
4 capacity of 230 kilovolts or less and 10 miles or less in  
5 length;

6 (c) each pipeline and associated facilities;

7 ~~(i) designed for or capable of transporting water;~~  
8 ~~water used as the medium for the transport of other~~  
9 ~~materials, natural gas, or crude oil and of a design~~  
10 ~~capacity greater than 20 inches in diameter and 30 miles or~~  
11 ~~greater in length; or~~

12 (ii) designed for or capable of transporting gas  
13 (except for natural gas), water, or liquid hydrocarbon  
14 products from or to a facility located within or without  
15 this state of the size indicated in subsection (10)(a) of  
16 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, designed for or  
20 capable of producing geothermally derived power equivalent  
21 to 25 million Btu per hour or more or any addition thereto  
22 having an estimated cost in excess of ~~\$250,000~~ \$150,000;

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

24 (11) "Person" means any individual, group, firm,  
25 partnership, corporation, cooperative, association,

1 government subdivision, government agency, local government,  
2 or other organization or entity.

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

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

12 Section 2. Section 75-20-202, MCA, is amended to read:

13 "75-20-202. Exemptions. (1) This chapter does not  
14 apply to any aspect of a facility over which an agency of  
15 the federal government has exclusive jurisdiction, but  
16 applies to any unpreempted aspect of a facility over which  
17 an agency of the federal government has partial  
18 jurisdiction.

19 (2) A certificate is not required under this chapter  
20 for a facility under diligent onsite physical construction  
21 or in operation on January 1, 1973.

22 (3) The board may adopt reasonable rules establishing  
23 exemptions from this chapter for the relocation,  
24 reconstruction, or upgrading of a facility that

25 (a) would otherwise be covered by this chapter; and

1 (b) that is unlikely to have a significant  
2 environmental impact by reason of length, size, location,  
3 available space or right-of-way, or construction methods;  
4 or

5 (c) utilizes coal, wood, biomass, grain, wind, or sun  
6 as a fuel source and the technology of which will result in  
7 greater efficiency, promote energy conservation, and promote  
8 greater system reliability than the existing facility."

9 Section 3. Section 75-20-211, MCA, is amended to read:

10 "75-20-211. Application -- filing and contents --  
11 proof of service and notice. (1) (a) An applicant shall file  
12 with the department and department of health a joint  
13 application for a certificate under this chapter and for the  
14 permits required ~~by state air and water quality laws under~~  
15 ~~the laws administered by the department of health and the~~  
16 ~~board of health~~ in such form as the board requires under  
17 applicable rules, containing the following information:

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

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

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

23 (iv) a description of reasonable alternate locations  
24 for the proposed facility, a general description of the  
25 comparative merits and detriments of each location

1 submitted, and a statement of the reasons why the primary  
2 proposed location is best suited for the facility;

3 (v) baseline data for the primary and reasonable  
4 alternate locations;

5 (vi) at the applicant's option, an environmental study  
6 plan to satisfy the requirements of this chapter; and

7 (vii) such other information as the applicant considers  
8 relevant or as the board and board of health by order or  
9 rule or the department and department of health by order or  
10 rule may require.

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

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

19 (3) An application shall be accompanied by proof of  
20 service of a copy of the application on the chief executive  
21 officer of each unit of local government, county  
22 commissioner, city or county planning boards, and federal  
23 agencies charged with the duty of protecting the environment  
24 or of planning land use in the area in which any portion of  
25 the proposed facility may be located, both as primarily and

1 as alternatively proposed and on the following state  
2 government agencies:

- 3 (a) environmental quality council;
- 4 (b) department of public service regulation;
- 5 (c) department of fish, wildlife, and parks;
- 6 (d) department of state lands;
- 7 (e) department of community affairs;
- 8 (f) department of highways;
- 9 (g) department of revenue.

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

13 (5) An application shall also be accompanied by proof  
14 that public notice thereof was given to persons residing in  
15 the area or alternative areas in which any portion of the  
16 proposed facility may be located, by publication of a  
17 summary of the application in those newspapers that will  
18 substantially inform those persons of the application."

19 Section 4. Section 75-20-216, MCA, is amended to read:

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

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

1 (b) the application is not in compliance and list the  
2 deficiencies therein; and upon correction of these  
3 deficiencies and resubmission by the applicant, the  
4 department and department of health shall within 30 days  
5 notify the applicant in writing that the application is in  
6 compliance and is accepted as complete.

7 (2) Upon receipt of an application complying with  
8 75-20-211 through 75-20-215, and this section, the  
9 department shall commence an intensive study and evaluation  
10 of the proposed facility and its effects, considering all  
11 applicable criteria listed in 75-20-301 and 75-20-503 and  
12 the department of health shall commence a study to enable it  
13 or the board of health to issue a decision, opinion, order,  
14 certification, or permit as provided in subsection (3). The  
15 department and department of health shall use, to the extent  
16 they consider applicable, valid and useful existing studies  
17 and reports submitted by the applicant or compiled by a  
18 state or federal agency.

19 (3) The department of health shall within 1 year  
20 following the date of acceptance of an application, and the  
21 board of health ~~or department of health~~, if applicable,  
22 within an additional 6 months, issue any decision, opinion,  
23 order, certification, or permit required ~~by state or federal~~  
24 ~~air--and--water--quality--laws~~ under the laws administered by  
25 the department of health or the board of health and this



1 chapter. The department of health and the board of health  
 2 shall determine compliance with ~~air--and--water--quality~~  
 3 ~~standards~~ all standards, permit requirements, and  
 4 implementation plans under their jurisdiction for the  
 5 primary and reasonable alternate locations in their  
 6 decision, opinion, order, certification, or permit. The  
 7 decision, opinion, order, certification, or permit, with or  
 8 without conditions, is conclusive on all matters ~~of air--and~~  
 9 ~~water--quality--impacts--under--the--federal--and--state--air--and~~  
 10 ~~water--quality--statutes~~ that the department of health and  
 11 board of health administer, and any of the criteria  
 12 specified in ~~subsections (2) through (7) of 75-20-503(3) and~~  
 13 ~~(4)~~ that are a part of the determinations made under ~~federal~~  
 14 ~~and--state--air--and--water--quality--statutes~~ the laws  
 15 administered by the department of health and the board of  
 16 health. Although the decision, opinion, order,  
 17 certification, or permit issued under this subsection is  
 18 conclusive, the board retains authority to make the  
 19 determination required under 75-20-301(2)(c). The decision,  
 20 opinion, order, certification, or permit of the department  
 21 of health or the board of health satisfies the review  
 22 requirements by those agencies and shall be acceptable in  
 23 lieu of an environmental impact statement under the Montana  
 24 Environmental Policy Act. A copy of the decision, opinion,  
 25 order, certification, or permit shall be served upon the

1 department and the board and shall be utilized as part of  
 2 their final site selection process. Prior to the issuance of  
 3 a preliminary decision by the department of health and  
 4 pursuant to rules adopted by the board of health, the  
 5 department of health shall provide an opportunity for public  
 6 review and comment. ~~A decision by the department of health~~  
 7 ~~or board of health is subject to appellate review pursuant~~  
 8 ~~to the air--and--water--quality--statutes administered by the~~  
 9 ~~department of health and board of health.~~

10 (4) Within 22 months following acceptance of an  
 11 application for a facility as defined in (a) and (d) of  
 12 75-20-104(10) and for a facility as defined in (b) and (c)  
 13 of 75-20-104(10) which is more than 30 miles in length and  
 14 within 1 year for a facility as defined in (b) and (c) of  
 15 75-20-104(10) which is 30 miles or less in length, the  
 16 department shall make a report to the board which shall  
 17 contain the department's studies, evaluations,  
 18 recommendations, other pertinent documents resulting from  
 19 its study and evaluation, and an environmental impact  
 20 statement or analysis prepared pursuant to the Montana  
 21 Environmental Policy Act, if any. If the application is for  
 22 a combination of two or more facilities, the department  
 23 shall make its report to the board within the greater of the  
 24 lengths of time provided for in this subsection for either  
 25 of the facilities.

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

11 Section 5. Section 75-20-218, MCA, is amended to read:

12 "75-20-218. Hearing date -- location -- department to  
 13 act as staff -- hearings to be held jointly. (1) Upon  
 14 receipt of the department's report submitted under  
 15 75-20-216, the board shall set a date for a hearing to begin  
 16 not more than 120 days after the receipt. Except for those  
 17 hearings involving applications submitted for facilities as  
 18 defined in (b) and (c) of 75-20-104(10), certification  
 19 hearings shall be conducted by the board in the county seat  
 20 of Lewis and Clark County or the county in which the  
 21 facility or the greater portion thereof is to be located.

22 (2) Except as provided in 75-20-221(2), the department  
 23 shall act as the staff for the board throughout the  
 24 decisionmaking process and the board may request the  
 25 department to present testimony or cross-examine witnesses

1 as the board considers necessary and appropriate.

2 (3) At the request of the applicant, the ~~duty~~  
 3 ~~authorized--state-air-and-water-quality-agencies~~ department  
 4 of health and the board of health shall hold any required  
 5 permit hearings required under laws administered by those  
 6 agencies in conjunction with the board certification  
 7 hearing. In such a conjunctive hearing the time periods  
 8 established for reviewing an application and for issuing a  
 9 decision on certification of a proposed facility under this  
 10 chapter supersede the time periods specified in other laws  
 11 administered by the ~~duty--authorized--state-air-and-water~~  
 12 ~~quality-agencies~~ department of health and the board of  
 13 health."

14 Section 6. Section 75-20-220, MCA, is amended to read:

15 "75-20-220. Hearing examiner -- restrictions --  
 16 duties. (1) If the board appoints a hearing examiner to  
 17 conduct any certification proceedings under this chapter,  
 18 the hearing examiner may not be a member of the board, an  
 19 employee of the department, or a member or employee of the  
 20 department of health or board of health. A hearing examiner,  
 21 if any, shall be appointed by the board within 20 days after  
 22 the department's report has been filed with the board. If a  
 23 hearing is held before the board of health or the department  
 24 of health, the board and the board of health or the  
 25 department of health shall mutually agree on the appointment

1 of a hearing examiner to preside at both hearings.

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

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

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

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

22 (6) The hearing examiner shall allow discovery which  
23 shall be completed before the commencement of the hearing,  
24 upon good cause shown and under such other conditions as the  
25 hearing examiner shall prescribe.

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

6 (8) The hearing examiner shall issue a prehearing  
7 order specifying the issues of fact and of law, identifying  
8 the witnesses of the active parties, naming the public  
9 witnesses and other interested parties who have submitted  
10 written testimony in lieu of appearance, outlining the order  
11 in which the hearing shall proceed, setting forth those  
12 section 75-20-301 criteria as to which no issue of fact or  
13 law has been raised which are to be conclusively presumed  
14 and are not subject to further proof except for good cause  
15 shown, and any other special rules to expedite the hearing  
16 which the hearing examiner shall adopt with the approval of  
17 the board.

18 (9) At the conclusion of the hearing, the hearing  
19 examiner shall declare the hearing closed and shall, within  
20 60 days of that date, prepare and submit to the board and in  
21 the case of a conjunctive hearing, within 90 days to the  
22 board and the board of health or department of health  
23 proposed findings of fact, conclusions of law, and a  
24 recommended decision.

25 (10) The hearing examiner appointed to conduct a

1 certification proceeding under this chapter shall insure  
 2 that the time of the proceeding, from the date the  
 3 department's report is filed with the board until the  
 4 recommended report and order of the examiner is filed with  
 5 the board, does not exceed 9 calendar months unless extended  
 6 by the board for good cause.

7 (11) The board or hearing examiner may waive all or a  
 8 portion of the procedures set forth in subsections (2)  
 9 through (8) of this section to expedite the hearing for a  
 10 facility when the department has recommended approval of a  
 11 facility and no objections have been filed."

12 Section 7. Section 75-20-301, MCA, is amended to read:

13 "75-20-301. Decision of board -- findings necessary  
 14 for certification. (1) Within 60 days after submission of  
 15 the recommended decision by the hearing examiner, the board  
 16 shall make complete findings, issue an opinion, and render a  
 17 decision upon the record, either granting or denying the  
 18 application as filed or granting it upon such terms,  
 19 conditions, or modifications of the construction, operation,  
 20 or maintenance of the facility as the board considers  
 21 appropriate.

22 (2) The board may not grant a certificate either as  
 23 proposed by the applicant or as modified by the board unless  
 24 it shall find and determine:

25 (a) the basis of the need for the facility;

1 (b) the nature of the probable environmental impact;

2 (c) that the facility represents the minimum adverse  
 3 environmental impact, considering the state of available  
 4 technology and the nature and economics of the various  
 5 alternatives;

6 (d) each of the criteria listed in 75-20-503;

7 (e) in the case of an electric, gas, or liquid  
 8 transmission line or aqueduct:

9 (i) what part, if any, of the line or aqueduct shall  
 10 be located underground;

11 (ii) that the facility is consistent with regional  
 12 plans for expansion of the appropriate grid of the utility  
 13 systems serving the state and interconnected utility  
 14 systems; and

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

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

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

3 (h) that the department of health or board of health  
4 have issued a decision, opinion, order, certification, or  
5 permit as required by 75-20-216(3); and

6 (i) that the use of public lands for location of the  
7 facility was evaluated and public lands were selected  
8 whenever their use is as economically practicable as the use  
9 of private lands and compatible with the environmental  
10 criteria listed in 75-20-503.

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

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

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

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

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

22 (e) any other factors that it considers relevant.

23 (4) Considerations of need, public need, or public  
24 convenience and necessity and demonstration thereof by the  
25 applicant shall apply only to utility facilities; however,

1 natural gas or crude oil facilities as defined in subsection  
2 (10)(c)(i) of 75-20-104 that are interstate pipelines are  
3 not utility facilities."

4 Section 8. Section 75-20-304, MCA, is amended to read:

5 "75-20-304. Waiver of provisions of certification  
6 proceedings. (1) The board may waive compliance with any of  
7 the provisions of 75-20-216 through 75-20-222, 75-20-501,  
8 and this part if the applicant makes a clear and convincing  
9 showing to the board at a public hearing that an immediate,  
10 urgent need for a facility exists and that the applicant did  
11 not have knowledge that the need for the facility existed  
12 sufficiently in advance to fully comply with the provisions  
13 of 75-20-216 through 75-20-222, 75-20-501, and this part.

14 (2) The board may waive compliance with any of the  
15 provisions of this chapter upon receipt of notice by a  
16 utility or person subject to this chapter that a facility or  
17 associated facility has been damaged or destroyed as a  
18 result of fire, flood, or other natural disaster or as the  
19 result of insurrection, war, or other civil disorder and  
20 there exists an immediate need for construction of a new  
21 facility or associated facility or the relocation of a  
22 previously existing facility or associated facility in order  
23 to promote the public welfare.

24 (3) The board shall waive compliance with the  
25 requirements of 75-20-214, subsections (2)(c), (3)(b), and

~~(3)(c) of 75-20-301, and 75-20-501 and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:~~

~~(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs at the employer's operations within the preceding 10-year period;~~

~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver; and~~

~~(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed.~~

~~(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.\*~~

Section 9. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board, decision board of health, and department of health decisions. (1) Any active party as defined in 75-20-221 aggrieved by the final

decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

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

~~(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department of health and the board of health and this chapter, the decision may only be appealed in conjunction with the final decision of the board as provided in 75-20-406(1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:~~

~~(a) appeal the denial under the appellate review procedures provided in the laws administered by the department of health and the board of health; or~~

~~(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision.~~

~~(4) Nothing in this section may be construed to prohibit the board from holding a hearing as herein provided~~

1 on all matters that are not the subject of a pending appeal  
2 by the applicant under 75-20-406(3)(a)."

3 NEW SECTION. Section 10. Applicability. [Sections 1  
4 and 7] do not apply to any pipeline facility for which a  
5 contract for the preparation of an environmental impact  
6 analysis has been entered into with any agency of the state  
7 of Montana prior to January 1, 1981.

8 Section 11. Effective date. This act is effective on  
9 passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 323-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 376 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

An act revising and clarifying the Major Facility Siting Act (MFSA) including major pipelines as a facility, expanding exemption criteria, clarifying the areas of decision by the Department of Health and Environmental Sciences, and providing for waiver of certain requirements for facilities proposed in areas experiencing severe unemployment.

Assumptions

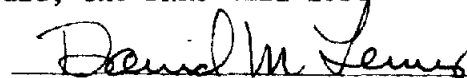
1. Section 1(1) will bring a number of existing facilities under the Utility Siting Act as they expand. It is not known how many facilities will expand each year so the amount of revenue the Department of Health and Environmental Sciences would obtain cannot be estimated.
2. Section 1(10)(c)(i) projects will be reviewed by the Department of Health and Environmental Sciences in the future as in the past. Therefore, there will be no additional financial gain or loss from this proposed change.
3. Section 2(3)(c) and Section 8(3) projects which would have been previously reviewed under the "Utility Siting Act" will be reviewed through existing State Clean Air and Water Acts and rules and where appropriate MEPA provisions. The number of projects falling under these sections are estimated to be small in number (an average of less than one per year). Assuming that an EIS may be required for projects with substantial environmental impact, and the EIS would be done by others, fees the Department of Health and Environmental Sciences would obtain from the EIS would probably be about the same as those received from the "Utility Siting Act". Projects on which an EIS would not be required will require some staff time but not knowing what these projects might be, a good estimate cannot be provided. However, it is believed that these costs will be less than \$10,000 per year to the Department of Health and Environmental Sciences.

Fiscal Impact to the Department of Health and Environmental Sciences (DHES)

The measure will cost the DHES about \$10,000 per year in lost fees.

Fiscal Impact to the Department of Natural Resources and Conservation (DNRC)

Waivers for facilities proposed in areas experiencing severe economic hardship will be processed in advance of filing an application. As a result, the DNRC will lose about \$16,500 in fees for each facility of the type proposed in this measure.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-81



Approved by Committee  
on Natural Resources

1                   SENATE BILL NO. 376  
2                   INTRODUCED BY S. BROWN  
3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
5    THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE  
6    EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE  
7    DEFINITION OF A FACILITY; INCLUDING ~~MAJOR PIPELINES AS A~~  
8    ~~FACILITY~~ EXEMPTING FACILITIES SUBJECT TO THE MONTANA STRIP-  
9    AND UNDERGROUND-MINE RECLAMATION ACT; EXPANDING EXEMPTION  
10   CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF  
11   A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES;  
12   CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND  
13   ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND  
14   ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD  
15   TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND  
16   MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A  
17   FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS  
18   EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT  
19   CLOSURE; ~~PROVIDING FOR APPLICABILITY OF SECTIONS AFFECTING~~  
20   ~~MAJOR PIPELINES~~; AMENDING SECTIONS 75-20-104, 75-20-202,  
21   75-20-211, 75-20-216, 75-20-218, 75-20-220, 75-20-301,  
22   75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE  
23   EFFECTIVE DATE."  
24  
25   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1                   Section 1. Section 75-20-104, MCA, is amended to read:  
2                   "75-20-104. Definitions. In this chapter, unless the  
3    context requires otherwise, the following definitions apply:  
4                   (1) "Addition thereto" means the installation of new  
5    machinery and equipment which would significantly change the  
6    conditions under which the ~~certificate-was-issued~~ facility  
7    is operated.  
8                   (2) "Application" means an application for a  
9    certificate submitted in accordance with this chapter and  
10   the rules adopted hereunder.  
11                   (3) "Associated facilities" includes but is not  
12   limited to transportation links of any kind, aqueducts,  
13   diversion dams, transmission substations, storage ponds,  
14   reservoirs, and any other device or equipment associated  
15   with the production or delivery of the energy form or  
16   product produced by a facility, except that the term does  
17   not include a facility.  
18                   (4) "Board" means the board of natural resources and  
19   conservation provided for in 2-15-3302.  
20                   (5) "Board of health" means the board of health and  
21   environmental sciences provided for in 2-15-2104.  
22                   (6) "Certificate" means the certificate of  
23   environmental compatibility and public need issued by the  
24   board under this chapter that is required for the  
25   construction or operation of a facility.

1 (7) "Commence to construct" means:

2 (a) any clearing of land, excavation, construction, or  
3 other action that would affect the environment of the site  
4 or route of a facility but does not mean changes needed for  
5 temporary use of sites or routes for nonutility purposes or  
6 uses in securing geological data, including necessary  
7 borings to ascertain foundation conditions;

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

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

18 (d) the relocation or upgrading of an existing  
19 facility defined by (b) or (c) of subsection (10), including  
20 upgrading to a design capacity covered by subsection  
21 (10)(b), except that the term does not include normal  
22 maintenance or repair of an existing facility.

23 (8) "Department" means the department of natural  
24 resources and conservation provided for in Title 2, chapter  
25 15, part 33.

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

4 (10) "Facility" means:

5 (a) except for crude oil and natural gas refineries,  
6 and facilities and associated facilities designed for or  
7 capable of producing, gathering, processing, transmitting,  
8 transporting, or distributing crude oil or natural gas, each  
9 plant, unit, or other facility and associated facilities  
10 designed for or capable of:

11 (i) generating 50 megawatts of electricity or more or  
12 any addition thereto (except pollution control facilities  
13 approved by the department of health and environmental  
14 sciences added to an existing plant) having an estimated  
15 cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

16 (ii) producing 25 million cubic feet or more of gas  
17 derived from coal per day or any addition thereto having an  
18 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

19 (iii) producing 25,000 barrels of liquid hydrocarbon  
20 products per day or more or any addition thereto having an  
21 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

22 (iv) enriching uranium minerals or any addition thereto  
23 having an estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10  
24 MILLION; or

25 (v) utilizing, ~~refining,~~ or converting 500,000 tons of

1 coal per year or more or any addition thereto, EXCEPT THOSE  
 2 FACILITIES SUBJECT TO THE MONTANA STRIP- AND  
 3 UNDERGROUND-MINE RECLAMATION ACT, having an estimated cost  
 4 in excess of ~~\$250,000~~ \$750,000 \$10 MILLION;

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

11 (c) each pipeline and associated facilities  
 12 ~~(i) designed for or capable of transporting water;~~  
 13 ~~water used as the medium for the transport of other~~  
 14 ~~materials; natural gas, or crude oil; and of a design~~  
 15 ~~capacity greater than 20 inches in diameter and 30 miles or~~  
 16 ~~greater in length; or~~

17 (ii) designed for or capable of transporting gas  
 18 (except for natural gas), water, or liquid hydrocarbon  
 19 products from or to a facility located within or without  
 20 this state of the size indicated in subsection (10)(a) of  
 21 this section;

22 (d) any use of geothermal resources, including the use  
 23 of underground space in existence or to be created, for the  
 24 creation, use, or conversion of energy, designed for or  
 25 capable of producing geothermally derived power equivalent

1 to 25 million Btu per hour or more or any addition thereto  
 2 having an estimated cost in excess of ~~\$250,000~~ \$750,000;

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

4 (11) "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 (12) "Transmission substation" means any structure,  
 9 device, or equipment assemblage, commonly located and  
 10 designed for voltage regulation, circuit protection, or  
 11 switching necessary for the construction or operation of a  
 12 proposed transmission line.

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

17 Section 2. Section 75-20-202, MCA, is amended to read:

18 "75-20-202. Exemptions. (1) This chapter does not  
 19 apply to any aspect of a facility over which an agency of  
 20 the federal government has exclusive jurisdiction, but  
 21 applies to any unpreempted aspect of a facility over which  
 22 an agency of the federal government has partial  
 23 jurisdiction.

24 (2) A certificate is not required under this chapter  
 25 for a facility under diligent onsite physical construction

1 or in operation on January 1, 1973.

2 (3) The board may adopt reasonable rules establishing  
3 exemptions from this chapter for the relocation,  
4 reconstruction, or upgrading of a facility that:

5 (a) would otherwise be covered by this chapter; and

6 (b) that is unlikely to have a significant  
7 environmental impact by reason of length, size, location,  
8 available space or right-of-way, or construction methods;  
9 or

10 (c) utilizes coal, wood, biomass, grain, wind, or sun  
11 as a fuel source and the technology of which will result in  
12 greater efficiency, promote energy conservation, and promote  
13 greater system reliability than the existing facility."

14 Section 3. 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 shall file  
17 with the department and department of health a joint  
18 application for a certificate under this chapter and for the  
19 permits required ~~by state air and water quality laws under~~  
20 the laws administered by the department of health and the  
21 board of health in such form as the board requires under  
22 applicable rules, containing the following information:

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

25 (ii) a summary of any studies which have been made of

1 the environmental impact of the facility;

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

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

8 (v) baseline data for the primary and reasonable  
9 alternate locations;

10 (vi) at the applicant's option, an environmental study  
11 plan to satisfy the requirements of this chapter; and

12 (vii) such other information as the applicant considers  
13 relevant or as the board and board of health by order or  
14 rule or the department and department of health by order or  
15 rule may require.

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

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

24 (3) An application shall be accompanied by proof of  
25 service of a copy of the application on the chief executive

1 officer of each unit of local government, county  
 2 commissioner, city or county planning boards, and federal  
 3 agencies charged with the duty of protecting the environment  
 4 or of planning land use in the area in which any portion of  
 5 the proposed facility may be located, both as primarily and  
 6 as alternatively proposed and on the following state  
 7 government agencies:

- 8 (a) environmental quality council;
- 9 (b) department of public service regulation;
- 10 (c) department of fish, wildlife, and parks;
- 11 (d) department of state lands;
- 12 (e) department of community affairs;
- 13 (f) department of highways;
- 14 (g) department of revenue.

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

18 (5) An application shall also be accompanied by proof  
 19 that public notice thereof was given to persons residing in  
 20 the area or alternative areas in which any portion of the  
 21 proposed facility may be located, by publication of a  
 22 summary of the application in those newspapers that will  
 23 substantially inform those persons of the application."

24 Section 4. 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) After receipt  
 2 of an application, the department and department of health  
 3 shall within 90 days notify the applicant in writing that:

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

6 (b) the application is not in compliance and list the  
 7 deficiencies therein; and upon correction of these  
 8 deficiencies and resubmission by the applicant, the  
 9 department and department of health shall within 30 days  
 10 notify the applicant in writing that the application is in  
 11 compliance and is accepted as complete.

12 (2) Upon receipt of an application complying with  
 13 75-20-211 through 75-20-215, and this section, the  
 14 department shall commence an intensive study and evaluation  
 15 of the proposed facility and its effects, considering all  
 16 applicable criteria listed in 75-20-301 and 75-20-503 and  
 17 the department of health shall commence a study to enable it  
 18 or the board of health to issue a decision, opinion, order,  
 19 certification, or permit as provided in subsection (3). The  
 20 department and department of health shall use, to the extent  
 21 they consider applicable, valid and useful existing studies  
 22 and reports submitted by the applicant or compiled by a  
 23 state or federal agency.

24 (3) The department of health shall within 1 year  
 25 following the date of acceptance of an application and the

1 board of health or department of health, if applicable,  
 2 within an additional 6 months, issue any decision, opinion,  
 3 order, certification, or permit required ~~by state or federal~~  
 4 ~~air and water quality laws under the laws administered by~~  
 5 the department of health or the board of health and this  
 6 chapter. The department of health and the board of health  
 7 shall determine compliance with ~~air and water quality~~  
 8 standards all standards, permit requirements, and  
 9 implementation plans under their jurisdiction for the  
 10 primary and reasonable alternate locations in their  
 11 decision, opinion, order, certification, or permit. The  
 12 decision, opinion, order, certification, or permit, with or  
 13 without conditions, is conclusive on all matters of ~~air and~~  
 14 ~~water quality impacts under the federal and state air and~~  
 15 ~~water quality statutes~~ that the department of health and  
 16 board of health administer, and any of the criteria  
 17 specified in subsections (2) through (7) of 75-20-503 ~~and~~  
 18 ~~(4)~~ that are a part of the determinations made under ~~federal~~  
 19 ~~and state air and water quality statutes~~ the laws  
 20 administered by the department of health and the board of  
 21 health. Although the decision, opinion, order,  
 22 certification, or permit issued under this subsection is  
 23 conclusive, the board retains authority to make the  
 24 determination required under 75-20-301(2)(c). The decision,  
 25 opinion, order, certification, or permit of the department

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

15 (4) Within 22 months following acceptance of an  
 16 application for a facility as defined in (a) and (d) of  
 17 75-20-104(10) and for a facility as defined in (b) and (c)  
 18 of 75-20-104(10) which is more than 30 miles in length and  
 19 within 1 year for a facility as defined in (b) and (c) of  
 20 75-20-104(10) which is 30 miles or less in length, the  
 21 department shall make a report to the board which shall  
 22 contain the department's studies, evaluations,  
 23 recommendations, other pertinent documents resulting from  
 24 its study and evaluation, and an environmental impact  
 25 statement or analysis prepared pursuant to the Montana

1 Environmental Policy Act, if any. If the application is for  
2 a combination of two or more facilities, the department  
3 shall make its report to the board within the greater of the  
4 lengths of time provided for in this subsection for either  
5 of the facilities.

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

16 Section 5. Section 75-20-218, MCA, is amended to read:  
17 "75-20-218. Hearing date -- location -- department to  
18 act as staff -- hearings to be held jointly. (1) Upon  
19 receipt of the department's report submitted under  
20 75-20-216, the board shall set a date for a hearing to begin  
21 not more than 120 days after the receipt. Except for those  
22 hearings involving applications submitted for facilities as  
23 defined in (b) and (c) of 75-20-104(10), certification  
24 hearings shall be conducted by the board in the county seat  
25 of Lewis and Clark County or the county in which the

1 facility or the greater portion thereof is to be located.

2 (2) Except as provided in 75-20-221(2), the department  
3 shall act as the staff for the board throughout the  
4 decisionmaking process and the board may request the  
5 department to present testimony or cross-examine witnesses  
6 as the board considers necessary and appropriate.

7 (3) At the request of the applicant, the duty  
8 ~~authorized--state--air-and-water-quality-agencies~~ department  
9 of health and the board of health shall hold any required  
10 permit hearings required under laws administered by those  
11 agencies in conjunction with the board certification  
12 hearing. In such a conjunctive hearing the time periods  
13 established for reviewing an application and for issuing a  
14 decision on certification of a proposed facility under this  
15 chapter supersede the time periods specified in other laws  
16 administered by the ~~duty--authorized--state-air-and-water~~  
17 ~~quality-agencies~~ department of health and the board of  
18 health."

19 Section 6. Section 75-20-220, MCA, is amended to read:  
20 "75-20-220. Hearing examiner -- restrictions --  
21 duties. (1) If the board appoints a hearing examiner to  
22 conduct any certification proceedings under this chapter,  
23 the hearing examiner may not be a member of the board, an  
24 employee of the department, or a member or employee of the  
25 department of health or board of health. A hearing examiner,

1 if any, shall be appointed by the board within 20 days after  
 2 the department's report has been filed with the board. If a  
 3 hearing is held before the board of health or the department  
 4 of health, the board and the board of health or the  
 5 department of health shall mutually agree on the appointment  
 6 of a hearing examiner to preside at both hearings.

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

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

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

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

1 allow the introduction of new evidence at any time.

2 (6) The hearing examiner shall allow discovery which  
 3 shall be completed before the commencement of the hearing,  
 4 upon good cause shown and under such other conditions as the  
 5 hearing examiner shall prescribe.

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

11 (8) The hearing examiner shall issue a prehearing  
 12 order specifying the issues of fact and of law, identifying  
 13 the witnesses of the active parties, naming the public  
 14 witnesses and other interested parties who have submitted  
 15 written testimony in lieu of appearance, outlining the order  
 16 in which the hearing shall proceed, setting forth those  
 17 section 75-20-301 criteria as to which no issue of fact or  
 18 law has been raised which are to be conclusively presumed  
 19 and are not subject to further proof except for good cause  
 20 shown, and any other special rules to expedite the hearing  
 21 which the hearing examiner shall adopt with the approval of  
 22 the board.

23 (9) At the conclusion of the hearing, the hearing  
 24 examiner shall declare the hearing closed and shall, within  
 25 60 days of that date, prepare and submit to the board and in



1 the case of a conjunctive hearing, within 90 days to the  
2 board and the board of health or department of health  
3 proposed findings of fact, conclusions of law, and a  
4 recommended decision.

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

12 (11) The board or hearing examiner may waive all or a  
13 portion of the procedures set forth in subsections (2)  
14 through (8) of this section to expedite the hearing for a  
15 facility when the department has recommended approval of a  
16 facility and no objections have been filed."

17 Section 7. Section 75-20-301, MCA, is amended to read:  
18 "75-20-301. Decision of board -- findings necessary  
19 for certification. (1) Within 60 days after submission of  
20 the recommended decision by the hearing examiner, the board  
21 shall make complete findings, issue an opinion, and render a  
22 decision upon the record, either granting or denying the  
23 application as filed or granting it upon such terms,  
24 conditions, or modifications of the construction, operation,  
25 or maintenance of the facility as the board considers

1 appropriate.

2 (2) The board may not grant a certificate either as  
3 proposed by the applicant or as modified by the board unless  
4 it shall find and determine:

5 (a) the basis of the need for the facility;  
6 (b) the nature of the probable environmental impact;  
7 (c) that the facility represents the minimum adverse  
8 environmental impact, considering the state of available  
9 technology and the nature and economics of the various  
10 alternatives;

11 (d) each of the criteria listed in 75-20-503;  
12 (e) in the case of an electric, gas, or liquid  
13 transmission line or aqueduct:

14 (i) what part, if any, of the line or aqueduct shall  
15 be located underground;

16 (ii) that the facility is consistent with regional  
17 plans for expansion of the appropriate grid of the utility  
18 systems serving the state and interconnected utility  
19 systems; and

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

22 (f) that the location of the facility as proposed  
23 conforms to applicable state and local laws and regulations  
24 issued thereunder, except that the board may refuse to apply  
25 any local law or regulation if it finds that, as applied to

1 the proposed facility, the law or regulation is unreasonably  
 2 restrictive in view of the existing technology, of factors  
 3 of cost or economics, or of the needs of consumers, whether  
 4 located inside or outside of the directly affected  
 5 government subdivisions;

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

8 (h) that the department of health or board of health  
 9 have issued a decision, opinion, order, certification, or  
 10 permit as required by 75-20-216(3); and

11 (i) that the use of public lands for location of the  
 12 facility was evaluated and public lands were selected  
 13 whenever their use is as economically practicable as the use  
 14 of private lands and compatible with the environmental  
 15 criteria listed in 75-20-503.

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

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

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

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

25 (d) the effects of the proposed facility on the public

1 health, welfare, and safety;

2 (e) any other factors that it considers relevant.

3 (4) Considerations of need, public need, or public  
 4 convenience and necessity and demonstration thereof by the  
 5 applicant shall apply only to utility facilities, ~~however,~~  
 6 ~~natural gas or crude oil facilities as defined in subsection~~  
 7 ~~(10)(c)(i) of 75-20-104 that are interstate pipelines are~~  
 8 ~~not utility facilities."~~

9 Section 8. Section 75-20-304, MCA, is amended to read:

10 "75-20-304. Waiver of provisions of certification  
 11 proceedings. (1) The board may waive compliance with any of  
 12 the provisions of 75-20-216 through 75-20-222, 75-20-501,  
 13 and this part if the applicant makes a clear and convincing  
 14 showing to the board at a public hearing that an immediate,  
 15 urgent need for a facility exists and that the applicant did  
 16 not have knowledge that the need for the facility existed  
 17 sufficiently in advance to fully comply with the provisions  
 18 of 75-20-216 through 75-20-222, 75-20-501, and this part.

19 (2) The board may waive compliance with any of the  
 20 provisions of this chapter upon receipt of notice by a  
 21 utility or person subject to this chapter that a facility or  
 22 associated facility has been damaged or destroyed as a  
 23 result of fire, flood, or other natural disaster or as the  
 24 result of insurrection, war, or other civil disorder and  
 25 there exists an immediate need for construction of a new

1 facility or associated facility or the relocation of a  
2 previously existing facility or associated facility in order  
3 to promote the public welfare.

4 (3) The board shall waive compliance with the  
5 requirements of 75-20-214, subsections (2)(c), (3)(b), and  
6 (3)(c) of 75-20-301, and 75-20-501 and the requirements of  
7 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),  
8 and 75-20-303(3)(a)(iv) relating to consideration of  
9 alternative sites if the applicant makes a clear and  
10 convincing showing to the board at a public hearing that:

11 (a) a proposed facility will be constructed in a  
12 county where a single employer within the county has  
13 permanently curtailed or ceased operations causing a loss of  
14 250 or more permanent jobs at the employer's operations  
15 within the preceding 10-year period;

16 (b) the county and municipal governing bodies in whose  
17 jurisdiction the facility is proposed to be located support  
18 by resolution such a waiver; and

19 (c) the proposed facility will be constructed within a  
20 15-mile radius of the operations that have ceased or been  
21 curtailed.

22 (4) The waiver provided for in subsection (3) applies  
23 only to permanent job losses by a single employer. The  
24 waiver provided for in subsection (3) does not apply to jobs  
25 of a temporary or seasonal nature, including but not limited

1 to construction jobs or job losses during labor disputes."

2 Section 9. Section 75-20-406, MCA, is amended to read:

3 "75-20-406. Judicial review of board, decision board  
4 of health, and department of health decisions. (1) Any  
5 active party as defined in 75-20-221 aggrieved by the final  
6 decision of the board on an application for a certificate  
7 may obtain judicial review of that decision by the filing of  
8 a petition in a state district court of competent  
9 jurisdiction.

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

13 (3) When the board of health or department of health  
14 conducts hearings pursuant to 75-20-216(3) and 75-20-218 and  
15 the applicant is granted a permit or certification, with or  
16 without conditions, pursuant to the laws administered by the  
17 department of health and the board of health and this  
18 chapter, the decision may only be appealed in conjunction  
19 with the final decision of the board as provided in  
20 75-20-406(1) and (2). If a permit or certification is denied  
21 by the department of health or the board of health, the  
22 applicant may:

23 (a) appeal the denial under the appellate review  
24 procedures provided in the laws administered by the  
25 department of health and the board of health; or

1       (b) reserve the right to appeal the denial by the  
2 department of health or the board of health until after the  
3 board has issued a final decision.

4       (4) Nothing in this section may be construed to  
5 prohibit the board from holding a hearing as herein provided  
6 on all matters that are not the subject of a pending appeal  
7 by the applicant under 75-20-406(3)(a)."

8       ~~NEW SECTION. Section 10. Applicability. Sections 1~~  
9 ~~and 7 do not apply to any pipeline facility for which a~~  
10 ~~contract for the preparation of an environmental impact~~  
11 ~~analysis has been entered into with any agency of the state~~  
12 ~~of Montana prior to January 1, 1981.~~

13       Section 10. Effective date. This act is effective on  
14 passage and approval.

-End-

1                   SENATE BILL NO. 376  
2                   INTRODUCED BY S. BROWN  
3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
5   THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE  
6   EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE  
7   DEFINITION OF A FACILITY; INCLUDING ~~MAJOR PIPELINES AS A~~  
8   ~~FACILITY~~ EXEMPTING FACILITIES SUBJECT TO THE MONTANA STRIP-  
9   AND UNDERGROUND-MINE RECLAMATION ACT; EXPANDING EXEMPTION  
10  CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF  
11  A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES;  
12  CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND  
13  ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND  
14  ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD  
15  TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND  
16  MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A  
17  FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS  
18  EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT  
19  CLOSURE; ~~PROVIDING FOR APPLICABILITY OF SECTIONS AFFECTING~~  
20  ~~MAJOR PIPELINES~~; AMENDING SECTIONS 75-20-104, 75-20-202,  
21  75-20-211, 75-20-216, 75-20-218, 75-20-220, 75-20-301,  
22  75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE  
23  EFFECTIVE DATE."  
24  
25  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1           Section 1. Section 75-20-104, MCA, is amended to read:  
2           "75-20-104. Definitions. In this chapter, unless the  
3   context requires otherwise, the following definitions apply:  
4           (1) "Addition thereto" means the installation of new  
5   machinery and equipment which would significantly change the  
6   conditions under which the ~~certificate-was-issued~~ facility  
7   is operated.  
8           (2) "Application" means an application for a  
9   certificate submitted in accordance with this chapter and  
10  the rules adopted hereunder.  
11          (3) "Associated facilities" includes but is not  
12  limited to transportation links of any kind, aqueducts,  
13  diversion dams, transmission substations, storage ponds,  
14  reservoirs, and any other device or equipment associated  
15  with the production or delivery of the energy form or  
16  product produced by a facility, except that the term does  
17  not include a facility.  
18          (4) "Board" means the board of natural resources and  
19  conservation provided for in 2-15-3302.  
20          (5) "Board of health" means the board of health and  
21  environmental sciences provided for in 2-15-2104.  
22          (6) "Certificate" means the certificate of  
23  environmental compatibility and public need issued by the  
24  board under this chapter that is required for the  
25  construction or operation of a facility.

1 (7) "Commence to construct" means:

2 (a) any clearing of land, excavation, construction, or  
3 other action that would affect the environment of the site  
4 or route of a facility but does not mean changes needed for  
5 temporary use of sites or routes for nonutility purposes or  
6 uses in securing geological data, including necessary  
7 borings to ascertain foundation conditions;

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

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

18 (d) the relocation or upgrading of an existing  
19 facility defined by (b) or (c) of subsection (10), including  
20 upgrading to a design capacity covered by subsection  
21 (10)(b), except that the term does not include normal  
22 maintenance or repair of an existing facility.

23 (8) "Department" means the department of natural  
24 resources and conservation provided for in Title 2, chapter  
25 15, part 33.

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

4 (10) "Facility" means:

5 (a) except for crude oil and natural gas refineries,  
6 and facilities and associated facilities designed for or  
7 capable of producing, gathering, processing, transmitting,  
8 transporting, or distributing crude oil or natural gas, each  
9 plant, unit, or other facility and associated facilities  
10 designed for or capable of:

11 (i) generating 50 megawatts of electricity or more or  
12 any addition thereto (except pollution control facilities  
13 approved by the department of health and environmental  
14 sciences added to an existing plant) having an estimated  
15 cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

16 (ii) producing 25 million cubic feet or more of gas  
17 derived from coal per day or any addition thereto having an  
18 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

19 (iii) producing 25,000 barrels of liquid hydrocarbon  
20 products per day or more or any addition thereto having an  
21 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

22 (iv) enriching uranium minerals or any addition thereto  
23 having an estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10  
24 MILLION; or

25 (v) utilizing ~~refining~~ or converting 500,000 tons of

1 coal per year or more or any addition thereto, EXCEPT THOSE  
 2 FACILITIES SUBJECT TO THE MONTANA STRIP- AND  
 3 UNDERGROUND-MINE RECLAMATION ACT, having an estimated cost  
 4 in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

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

11 (c) each pipeline and associated facilities:  
 12 ~~iii) designed for or capable of transporting water;~~  
 13 ~~water used as the medium for the transport of other~~  
 14 ~~materials; natural gas; or crude oil; and of a design~~  
 15 ~~capacity greater than 20 inches in diameter and 30 miles or~~  
 16 ~~greater in length; or~~

17 iii) designed for or capable of transporting gas  
 18 (except for natural gas), water, or liquid hydrocarbon  
 19 products from or to a facility located within or without  
 20 this state of the size indicated in subsection (10)(a) of  
 21 this section;

22 (d) any use of geothermal resources, including the use  
 23 of underground space in existence or to be created, for the  
 24 creation, use, or conversion of energy, designed for or  
 25 capable of producing geothermally derived power equivalent

1 to 25 million Btu per hour or more or any addition thereto  
 2 having an estimated cost in excess of ~~\$250,000~~ \$750,000;

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

4 (11) "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 (12) "Transmission substation" means any structure,  
 9 device, or equipment assemblage, commonly located and  
 10 designed for voltage regulation, circuit protection, or  
 11 switching necessary for the construction or operation of a  
 12 proposed transmission line.

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

17 Section 2. Section 75-20-202, MCA, is amended to read:

18 "75-20-202. Exemptions. (1) This chapter does not  
 19 apply to any aspect of a facility over which an agency of  
 20 the federal government has exclusive jurisdiction, but  
 21 applies to any unpreempted aspect of a facility over which  
 22 an agency of the federal government has partial  
 23 jurisdiction.

24 (2) A certificate is not required under this chapter  
 25 for a facility under diligent onsite physical construction

1 or in operation on January 1, 1973.

2 (3) The board may adopt reasonable rules establishing  
3 exemptions from this chapter for the relocation,  
4 reconstruction, or upgrading of a facility that:

5 (a) would otherwise be covered by this chapter; and

6 (b) that is unlikely to have a significant  
7 environmental impact by reason of length, size, location,  
8 available space or right-of-way, or construction methods;  
9 or

10 (c) utilizes coal, wood, biomass, grain, wind, or sun  
11 as a fuel source and the technology of which will result in  
12 greater efficiency, promote energy conservation, and promote  
13 greater system reliability than the existing facility."

14 Section 3. 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 shall file  
17 with the department and department of health a joint  
18 application for a certificate under this chapter and for the  
19 permits required ~~by state air and water quality laws under~~  
20 the laws administered by the department of health and the  
21 board of health in such form as the board requires under  
22 applicable rules, containing the following information:

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

25 (ii) a summary of any studies which have been made of

1 the environmental impact of the facility;

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

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

8 (v) baseline data for the primary and reasonable  
9 alternate locations;

10 (vi) at the applicant's option, an environmental study  
11 plan to satisfy the requirements of this chapter; and

12 (vii) such other information as the applicant considers  
13 relevant or as the board and board of health by order or  
14 rule or the department and department of health by order or  
15 rule may require.

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

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

24 (3) An application shall be accompanied by proof of  
25 service of a copy of the application on the chief executive



1 officer of each unit of local government, county  
 2 commissioner, city or county planning boards, and federal  
 3 agencies charged with the duty of protecting the environment  
 4 or of planning land use in the area in which any portion of  
 5 the proposed facility may be located, both as primarily and  
 6 as alternatively proposed and on the following state  
 7 government agencies:

- 8 (a) environmental quality council;
- 9 (b) department of public service regulation;
- 10 (c) department of fish, wildlife, and parks;
- 11 (d) department of state lands;
- 12 (e) department of community affairs;
- 13 (f) department of highways;
- 14 (g) department of revenue.

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

18 (5) An application shall also be accompanied by proof  
 19 that public notice thereof was given to persons residing in  
 20 the area or alternative areas in which any portion of the  
 21 proposed facility may be located, by publication of a  
 22 summary of the application in those newspapers that will  
 23 substantially inform those persons of the application."

24 Section 4. 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) After receipt  
 2 of an application, the department and department of health  
 3 shall within 90 days notify the applicant in writing that:

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

6 (b) the application is not in compliance and list the  
 7 deficiencies therein; and upon correction of these  
 8 deficiencies and resubmission by the applicant, the  
 9 department and department of health shall within 30 days  
 10 notify the applicant in writing that the application is in  
 11 compliance and is accepted as complete.

12 (2) Upon receipt of an application complying with  
 13 75-20-211 through 75-20-215, and this section, the  
 14 department shall commence an intensive study and evaluation  
 15 of the proposed facility and its effects, considering all  
 16 applicable criteria listed in 75-20-301 and 75-20-503 and  
 17 the department of health shall commence a study to enable it  
 18 or the board of health to issue a decision, opinion, order,  
 19 certification, or permit as provided in subsection (3). The  
 20 department and department of health shall use, to the extent  
 21 they consider applicable, valid and useful existing studies  
 22 and reports submitted by the applicant or compiled by a  
 23 state or federal agency.

24 (3) The department of health shall within 1 year  
 25 following the date of acceptance of an application, and the

1 board of health or department of health, if applicable,  
 2 within an additional 6 months, issue any decision, opinion,  
 3 order, certification, or permit required ~~by state or federal~~  
 4 ~~air and water quality laws~~ under the laws administered by  
 5 the department of health or the board of health and this  
 6 chapter. The department of health and the board of health  
 7 shall determine compliance with ~~air and water quality~~  
 8 ~~standards~~ all standards, permit requirements, and  
 9 implementation plans under their jurisdiction for the  
 10 primary and reasonable alternate locations in their  
 11 decision, opinion, order, certification, or permit. The  
 12 decision, opinion, order, certification, or permit, with or  
 13 without conditions, is conclusive on all matters of ~~air and~~  
 14 ~~water quality impacts under the federal and state air and~~  
 15 ~~water quality statutes~~ that the department of health and  
 16 board of health administer, and any of the criteria  
 17 specified in subsections (2) through (7) of 75-20-503(3) and  
 18 ~~(4)~~ that are a part of the determinations made under ~~federal~~  
 19 ~~and state air and water quality statutes~~ the laws  
 20 administered by the department of health and the board of  
 21 health. Although the decision, opinion, order,  
 22 certification, or permit issued under this subsection is  
 23 conclusive, the board retains authority to make the  
 24 determination required under 75-20-301(2)(c). The decision,  
 25 opinion, order, certification, or permit of the department

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

15 (4) Within 22 months following acceptance of an  
 16 application for a facility as defined in (a) and (d) of  
 17 75-20-104(10) and for a facility as defined in (b) and (c)  
 18 of 75-20-104(10) which is more than 30 miles in length and  
 19 within 1 year for a facility as defined in (b) and (c) of  
 20 75-20-104(10) which is 30 miles or less in length, the  
 21 department shall make a report to the board which shall  
 22 contain the department's studies, evaluations,  
 23 recommendations, other pertinent documents resulting from  
 24 its study and evaluation, and an environmental impact  
 25 statement or analysis prepared pursuant to the Montana

1 Environmental Policy Act, if any. If the application is for  
2 a combination of two or more facilities, the department  
3 shall make its report to the board within the greater of the  
4 lengths of time provided for in this subsection for either  
5 of the facilities.

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

16 Section 5. Section 75-20-218, MCA, is amended to read:  
17 "75-20-218. Hearing date -- location -- department to  
18 act as staff -- hearings to be held jointly. (1) Upon  
19 receipt of the department's report submitted under  
20 75-20-216, the board shall set a date for a hearing to begin  
21 not more than 120 days after the receipt. Except for those  
22 hearings involving applications submitted for facilities as  
23 defined in (b) and (c) of 75-20-104(10), certification  
24 hearings shall be conducted by the board in the county seat  
25 of Lewis and Clark County or the county in which the

1 facility or the greater portion thereof is to be located.

2 (2) Except as provided in 75-20-221(2), the department  
3 shall act as the staff for the board throughout the  
4 decisionmaking process and the board may request the  
5 department to present testimony or cross-examine witnesses  
6 as the board considers necessary and appropriate.

7 (3) At the request of the applicant, the duty  
8 ~~authorized--state--air--and--water--quality--agencies~~ department  
9 of health and the board of health shall hold any required  
10 permit hearings required under laws administered by those  
11 agencies in conjunction with the board certification  
12 hearing. In such a conjunctive hearing the time periods  
13 established for reviewing an application and for issuing a  
14 decision on certification of a proposed facility under this  
15 chapter supersede the time periods specified in other laws  
16 administered by the ~~duty--authorized--state--air--and--water~~  
17 ~~quality--agencies~~ department of health and the board of  
18 health."

19 Section 6. Section 75-20-220, MCA, is amended to read:  
20 "75-20-220. Hearing examiner -- restrictions --  
21 duties. (1) If the board appoints a hearing examiner to  
22 conduct any certification proceedings under this chapter,  
23 the hearing examiner may not be a member of the board, an  
24 employee of the department, or a member or employee of the  
25 department of health or board of health. A hearing examiner,

1 if any, shall be appointed by the board within 20 days after  
 2 the department's report has been filed with the board. If a  
 3 hearing is held before the board of health or the department  
 4 of health, the board and the board of health or the  
 5 department of health shall mutually agree on the appointment  
 6 of a hearing examiner to preside at both hearings.

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

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

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

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

1 allow the introduction of new evidence at any time.

2 (6) The hearing examiner shall allow discovery which  
 3 shall be completed before the commencement of the hearing,  
 4 upon good cause shown and under such other conditions as the  
 5 hearing examiner shall prescribe.

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

11 (8) The hearing examiner shall issue a prehearing  
 12 order specifying the issues of fact and of law, identifying  
 13 the witnesses of the active parties, naming the public  
 14 witnesses and other interested parties who have submitted  
 15 written testimony in lieu of appearance, outlining the order  
 16 in which the hearing shall proceed, setting forth those  
 17 section 75-20-301 criteria as to which no issue of fact or  
 18 law has been raised which are to be conclusively presumed  
 19 and are not subject to further proof except for good cause  
 20 shown, and any other special rules to expedite the hearing  
 21 which the hearing examiner shall adopt with the approval of  
 22 the board.

23 (9) At the conclusion of the hearing, the hearing  
 24 examiner shall declare the hearing closed and shall, within  
 25 60 days of that date, prepare and submit to the board and in

1 the case of a conjunctive hearing, within 90 days to the  
 2 board and the board of health or department of health  
 3 proposed findings of fact, conclusions of law, and a  
 4 recommended decision.

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

12 (11) The board or hearing examiner may waive all or a  
 13 portion of the procedures set forth in subsections (2)  
 14 through (8) of this section to expedite the hearing for a  
 15 facility when the department has recommended approval of a  
 16 facility and no objections have been filed."

17 Section 7. Section 75-20-301, MCA, is amended to read:

18 "75-20-301. Decision of board -- findings necessary  
 19 for certification. (1) Within 60 days after submission of  
 20 the recommended decision by the hearing examiner, the board  
 21 shall make complete findings, issue an opinion, and render a  
 22 decision upon the record, either granting or denying the  
 23 application as filed or granting it upon such terms,  
 24 conditions, or modifications of the construction, operation,  
 25 or maintenance of the facility as the board considers

1 appropriate.

2 (2) The board may not grant a certificate either as  
 3 proposed by the applicant or as modified by the board unless  
 4 it shall find and determine:

5 (a) the basis of the need for the facility;  
 6 (b) the nature of the probable environmental impact;  
 7 (c) that the facility represents the minimum adverse  
 8 environmental impact, considering the state of available  
 9 technology and the nature and economics of the various  
 10 alternatives;

11 (d) each of the criteria listed in 75-20-503;

12 (e) in the case of an electric, gas, or liquid  
 13 transmission line or aqueduct:

14 (i) what part, if any, of the line or aqueduct shall  
 15 be located underground;

16 (ii) that the facility is consistent with regional  
 17 plans for expansion of the appropriate grid of the utility  
 18 systems serving the state and interconnected utility  
 19 systems; and

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

22 (f) that the location of the facility as proposed  
 23 conforms to applicable state and local laws and regulations  
 24 issued thereunder, except that the board may refuse to apply  
 25 any local law or regulation if it finds that, as applied to

1 the proposed facility, the law or regulation is unreasonably  
 2 restrictive in view of the existing technology, of factors  
 3 of cost or economics, or of the needs of consumers, whether  
 4 located inside or outside of the directly affected  
 5 government subdivisions;

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

8 (h) that the department of health or board of health  
 9 have issued a decision, opinion, order, certification, or  
 10 permit as required by 75-20-216(3); and

11 (i) that the use of public lands for location of the  
 12 facility was evaluated and public lands were selected  
 13 whenever their use is as economically practicable as the use  
 14 of private lands and compatible with the environmental  
 15 criteria listed in 75-20-503.

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

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

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

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

25 (d) the effects of the proposed facility on the public

1 health, welfare, and safety;

2 (e) any other factors that it considers relevant.

3 (4) Considerations of need, public need, or public  
 4 convenience and necessity and demonstration thereof by the  
 5 applicant shall apply only to utility facilities ~~however,~~  
 6 ~~natural gas or crude oil facilities as defined in subsection~~  
 7 ~~10(c)(ii) of 75-20-104 that are interstate pipelines are~~  
 8 ~~not utility facilities."~~

9 Section 8. Section 75-20-304, MCA, is amended to read:

10 "75-20-304. Waiver of provisions of certification  
 11 proceedings. (1) The board may waive compliance with any of  
 12 the provisions of 75-20-216 through 75-20-222, 75-20-501,  
 13 and this part if the applicant makes a clear and convincing  
 14 showing to the board at a public hearing that an immediate,  
 15 urgent need for a facility exists and that the applicant did  
 16 not have knowledge that the need for the facility existed  
 17 sufficiently in advance to fully comply with the provisions  
 18 of 75-20-216 through 75-20-222, 75-20-501, and this part.

19 (2) The board may waive compliance with any of the  
 20 provisions of this chapter upon receipt of notice by a  
 21 utility or person subject to this chapter that a facility or  
 22 associated facility has been damaged or destroyed as a  
 23 result of fire, flood, or other natural disaster or as the  
 24 result of insurrection, war, or other civil disorder and  
 25 there exists an immediate need for construction of a new

1 facility or associated facility or the relocation of a  
2 previously existing facility or associated facility in order  
3 to promote the public welfare.

4 (3) The board shall waive compliance with the  
5 requirements of 75-20-214, subsections (2)(c), (3)(b), and  
6 (3)(c) of 75-20-301, and 75-20-501 and the requirements of  
7 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),  
8 and 75-20-303(3)(a)(iv) relating to consideration of  
9 alternative sites if the applicant makes a clear and  
10 convincing showing to the board at a public hearing that:

11 (a) a proposed facility will be constructed in a  
12 county where a single employer within the county has  
13 permanently curtailed or ceased operations causing a loss of  
14 250 or more permanent jobs at the employer's operations  
15 within the preceding 10-year period;

16 (b) the county and municipal governing bodies in whose  
17 jurisdiction the facility is proposed to be located support  
18 by resolution such a waiver; and

19 (c) the proposed facility will be constructed within a  
20 15-mile radius of the operations that have ceased or been  
21 curtailed.

22 (4) The waiver provided for in subsection (3) applies  
23 only to permanent job losses by a single employer. The  
24 waiver provided for in subsection (3) does not apply to jobs  
25 of a temporary or seasonal nature, including but not limited

1 to construction jobs or job losses during labor disputes."

2 Section 9. Section 75-20-406, MCA, is amended to read:

3 "75-20-406. Judicial review of board, decision board  
4 of health, and department of health decisions. (1) Any  
5 active party as defined in 75-20-221 aggrieved by the final  
6 decision of the board on an application for a certificate  
7 may obtain judicial review of that decision by the filing of  
8 a petition in a state district court of competent  
9 jurisdiction.

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

13 (3) When the board of health or department of health  
14 conducts hearings pursuant to 75-20-216(3) and 75-20-218 and  
15 the applicant is granted a permit or certification, with or  
16 without conditions, pursuant to the laws administered by the  
17 department of health and the board of health and this  
18 chapter, the decision may only be appealed in conjunction  
19 with the final decision of the board as provided in  
20 75-20-406(1) and (2). If a permit or certification is denied  
21 by the department of health or the board of health, the  
22 applicant may:

23 (a) appeal the denial under the appellate review  
24 procedures provided in the laws administered by the  
25 department of health and the board of health; or

1       (b) reserve the right to appeal the denial by the  
2 department of health or the board of health until after the  
3 board has issued a final decision.

4       (4) Nothing in this section may be construed to  
5 prohibit the board from holding a hearing as herein provided  
6 on all matters that are not the subject of a pending appeal  
7 by the applicant under 75-20-406(3)(a)."

8       ~~NEW SECTION--Section 10--Applicability--[Sections--1~~  
9 ~~and--7]--do--not--apply--to--any--pipeline--facility--for--which--a~~  
10 ~~contract--for--the--preparation--of--an--environmental--impact~~  
11 ~~analysis--has--been--entered--into--with--any--agency--of--the--state~~  
12 ~~of--Montana--prior--to--January--1--1981.~~

13       Section 10. Effective date. This act is effective on  
14 passage and approval.

-End-



1 SENATE BILL NO. 376

2 INTRODUCED BY S. BROWN

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
 5 THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE  
 6 EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE  
 7 DEFINITION OF A FACILITY; ~~INCLUDING MAJOR PIPELINES AS A~~  
 8 FACILITY EXEMPTING FACILITIES SUBJECT TO THE MONTANA STRIP  
 9 AND UNDERGROUND MINE RECLAMATION ACT; EXPANDING EXEMPTION  
 10 CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF  
 11 A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES;  
 12 CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND  
 13 ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND  
 14 ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD  
 15 TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND  
 16 MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A  
 17 FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS  
 18 EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT  
 19 CLOSURE; ~~PROVIDING FOR APPLICABILITY OF SECTIONS AFFECTING~~  
 20 ~~MAJOR PIPELINES~~; AMENDING SECTIONS 75-20-104, 75-20-202,  
 21 75-20-211, 75-20-216, 75-20-218, 75-20-220, ~~75-20-301,~~  
 22 75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE  
 23 EFFECTIVE DATE."

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

2 "75-20-104. Definitions. In this chapter, unless the  
 3 context requires otherwise, the following definitions apply:

4 (1) "Addition thereto" means the installation of new  
 5 machinery and equipment which would significantly change the  
 6 conditions under which the ~~certificate-was-issued~~ facility  
 7 is operated.

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

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

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

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

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

1 (7) "Commence to construct" means:

2 (a) any clearing of land, excavation, construction, or  
3 other action that would affect the environment of the site  
4 or route of a facility but does not mean changes needed for  
5 temporary use of sites or routes for nonutility purposes or  
6 uses in securing geological data, including necessary  
7 borings to ascertain foundation conditions;

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

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

18 (d) the relocation or upgrading of an existing  
19 facility defined by (b) or (c) of subsection (10), including  
20 upgrading to a design capacity covered by subsection  
21 (10)(b); except that the term does not include normal  
22 maintenance or repair of an existing facility.

23 (8) "Department" means the department of natural  
24 resources and conservation provided for in Title 2, chapter  
25 15, part 33.

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

4 (10) "Facility" means:

5 (a) except for crude oil and natural gas refineries,  
6 and facilities and associated facilities designed for or  
7 capable of producing, gathering, processing, transmitting,  
8 transporting, or distributing crude oil or natural gas, AND  
9 THOSE FACILITIES SUBJECT TO THE MONTANA STRIP AND  
10 UNDERGROUND MINE RECLAMATION ACT, each plant, unit, or other  
11 facility and associated facilities designed for or capable  
12 of:

13 (i) generating 50 megawatts of electricity or more or  
14 any addition thereto (except pollution control facilities  
15 approved by the department of health and environmental  
16 sciences added to an existing plant) having an estimated  
17 cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

18 (ii) producing 25 million cubic feet or more of gas  
19 derived from coal per day or any addition thereto having an  
20 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

21 (iii) producing 25,000 barrels of liquid hydrocarbon  
22 products per day or more or any addition thereto having an  
23 estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10 MILLION;

24 (iv) enriching uranium minerals or any addition thereto  
25 having an estimated cost in excess of ~~\$250,000~~ ~~\$750,000~~ \$10

1 MILLION; or

2 (v) ~~utilizing, refining, or converting 500,000 tons of~~  
 3 ~~coal per year or more or any addition thereto, EXCEPT THOSE~~  
 4 ~~FACILITIES SUBJECT TO THE MONTANA STRIP AND~~  
 5 ~~UNDERGROUND MINE RECLAMATION ACT, having an estimated cost~~  
 6 ~~in excess of \$250,000 \$750,000 \$10 MILLION;~~

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

13 (c) each pipeline and associated facilities:

14 ~~(i) designed for or capable of transporting water;~~  
 15 ~~water used as the medium for the transport of other~~  
 16 ~~materials, natural gas, or crude oil, and of a design~~  
 17 ~~capacity greater than 20 inches in diameter and 30 miles or~~  
 18 ~~greater in length; or~~

19 (iii) designed for or capable of transporting gas  
 20 (except for natural gas), water, or liquid hydrocarbon  
 21 products from or to a facility located within or without  
 22 this state of the size indicated in subsection (10)(a) of  
 23 this section;

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

1 creation, use, or conversion of energy, designed for or  
 2 capable of producing geothermally derived power equivalent  
 3 to 25 million Btu per hour or more or any addition thereto  
 4 having an estimated cost in excess of \$250,000 \$750,000;

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

6 (11) "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 (12) "Transmission substation" means any structure,  
 11 device, or equipment assemblage, commonly located and  
 12 designed for voltage regulation, circuit protection, or  
 13 switching necessary for the construction or operation of a  
 14 proposed transmission line.

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

19 Section 2. Section 75-20-202, MCA, is amended to read:  
 20 "75-20-202. Exemptions. (1) This chapter does not  
 21 apply to any aspect of a facility over which an agency of  
 22 the federal government has exclusive jurisdiction, but  
 23 applies to any unpreempted aspect of a facility over which  
 24 an agency of the federal government has partial  
 25 jurisdiction.

1 (2) A certificate is not required under this chapter  
2 for a facility under diligent onsite physical construction  
3 or in operation on January 1, 1973.

4 (3) The board may adopt reasonable rules establishing  
5 exemptions from this chapter for the relocation,  
6 reconstruction, or upgrading of a facility that:

7 (a) would otherwise be covered by this chapter; and  
8 (b) that is unlikely to have a significant  
9 environmental impact by reason of length, size, location,  
10 available space or right-of-way, or construction methods;  
11 or

12 (c) utilizes coal, wood, biomass, grain, wind, or sun  
13 as a fuel source and the technology of which will result in  
14 greater efficiency, promote energy conservation, and promote  
15 greater system reliability than the existing facility."

16 Section 3. Section 75-20-211, MCA, is amended to read:

17 "75-20-211. Application -- filing and contents --  
18 proof of service and notice. (1) (a) An applicant shall file  
19 with the department and department of health a joint  
20 application for a certificate under this chapter and for the  
21 permits ~~required by state air and water quality laws under~~  
22 the laws administered by the department of health and the  
23 board of health in such form as the board requires under  
24 applicable rules, containing the following information:

25 (i) a description of the location and of the facility

1 to be built thereon;

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

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

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

10 (v) baseline data for the primary and reasonable  
11 alternate locations;

12 (vi) at the applicant's option, an environmental study  
13 plan to satisfy the requirements of this chapter; and

14 (vii) such other information as the applicant considers  
15 relevant or as the board and board of health by order or  
16 rule or the department and department of health by order or  
17 rule may require.

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

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

1 (3) An application shall be accompanied by proof of  
 2 service of a copy of the application on the chief executive  
 3 officer of each unit of local government, county  
 4 commissioner, city or county planning boards, and federal  
 5 agencies charged with the duty of protecting the environment  
 6 or of planning land use in the area in which any portion of  
 7 the proposed facility may be located, both as primarily and  
 8 as alternatively proposed and on the following state  
 9 government agencies:

- 10 (a) environmental quality council;
- 11 (b) department of public service regulation;
- 12 (c) department of fish, wildlife, and parks;
- 13 (d) department of state lands;
- 14 (e) department of community affairs;
- 15 (f) department of highways;
- 16 (g) department of revenue.

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

20 (5) An application shall also be accompanied by proof  
 21 that public notice thereof was given to persons residing in  
 22 the area or alternative areas in which any portion of the  
 23 proposed facility may be located, by publication of a  
 24 summary of the application in those newspapers that will  
 25 substantially inform those persons of the application."

1 Section 4. 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) After receipt  
 4 of an application, the department and department of health  
 5 shall within 90 days notify the applicant in writing that:  
 6 (a) the application is in compliance and is accepted  
 7 as complete; or

8 (b) the application is not in compliance and list the  
 9 deficiencies therein; and upon correction of these  
 10 deficiencies and resubmission by the applicant, the  
 11 department and department of health shall within 30 days  
 12 notify the applicant in writing that the application is in  
 13 compliance and is accepted as complete.

14 (2) Upon receipt of an application complying with  
 15 75-20-211 through 75-20-215, and this section, the  
 16 department shall commence an intensive study and evaluation  
 17 of the proposed facility and its effects, considering all  
 18 applicable criteria listed in 75-20-301 and 75-20-503 and  
 19 the department of health shall commence a study to enable it  
 20 or the board of health to issue a decision, opinion, order,  
 21 certification, or permit as provided in subsection (3). The  
 22 department and department of health shall use, to the extent  
 23 they consider applicable, valid and useful existing studies  
 24 and reports submitted by the applicant or compiled by a  
 25 state or federal agency.

1           (3) The department of health shall within 1 year  
 2 following the date of acceptance of an application, and the  
 3 board of health or department of health, if applicable,  
 4 within an additional 6 months, issue any decision, opinion,  
 5 order, certification, or permit required by ~~state or federal~~  
 6 ~~air--and--water--quality--laws~~ under the laws administered by  
 7 the department of health or the board of health and this  
 8 chapter. The department of health and the board of health  
 9 shall determine compliance with ~~air--and--water--quality~~  
 10 ~~standards~~ all standards, permit requirements, and  
 11 implementation plans under their jurisdiction for the  
 12 primary and reasonable alternate locations in their  
 13 decision, opinion, order, certification, or permit. The  
 14 decision, opinion, order, certification, or permit, with or  
 15 without conditions, is conclusive on all matters of ~~air--and~~  
 16 ~~water--quality--impacts--under--the--federal--and--state--air--and~~  
 17 ~~water--quality--statutes~~ that the department of health and  
 18 board of health administer, and any of the criteria  
 19 specified in subsections (2) through (7) of 75-20-503(3)-and  
 20 (4) that are a part of the determinations made under federal  
 21 ~~and--state--air--and--water--quality--statutes~~ the laws  
 22 administered by the department of health and the board of  
 23 health. Although the decision, opinion, order,  
 24 certification, or permit issued under this subsection is  
 25 conclusive, the board retains authority to make the

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

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

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

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

18 Section 5. Section 75-20-218, MCA, is amended to read:  
 19 "75-20-218. Hearing date -- location -- department to  
 20 act as staff -- hearings to be held jointly. (1) Upon  
 21 receipt of the department's report submitted under  
 22 75-20-216, the board shall set a date for a hearing to begin  
 23 not more than 120 days after the receipt. Except for those  
 24 hearings involving applications submitted for facilities as  
 25 defined in (b) and (c) of 75-20-104(10), certification

1 hearings shall be conducted by the board in the county seat  
 2 of Lewis and Clark County or the county in which the  
 3 facility or the greater portion thereof is to be located.

4 (2) Except as provided in 75-20-221(2), the department  
 5 shall act as the staff for the board throughout the  
 6 decisionmaking process and the board may request the  
 7 department to present testimony or cross-examine witnesses  
 8 as the board considers necessary and appropriate.

9 (3) At the request of the applicant, the ~~duty~~  
 10 ~~authorized--state--air--and--water--quality--agencies~~ department  
 11 of health and the board of health shall hold any required  
 12 permit hearings required under laws administered by those  
 13 agencies in conjunction with the board certification  
 14 hearing. In such a conjunctive hearing the time periods  
 15 established for reviewing an application and for issuing a  
 16 decision on certification of a proposed facility under this  
 17 chapter supersede the time periods specified in other laws  
 18 administered by the ~~duty--authorized--state--air--and--water~~  
 19 ~~quality--agencies~~ department of health and the board of  
 20 health."

21 Section 6. Section 75-20-220, MCA, is amended to read:  
 22 "75-20-220. Hearing examiner -- restrictions --  
 23 duties. (1) If the board appoints a hearing examiner to  
 24 conduct any certification proceedings under this chapter,  
 25 the hearing examiner may not be a member of the board, an

1 employee of the department, or a member or employee of the  
 2 department of health or board of health. A hearing examiner,  
 3 if any, shall be appointed by the board within 20 days after  
 4 the department's report has been filed with the board. If a  
 5 hearing is held before the board of health or the department  
 6 of health, the board and the board of health or the  
 7 department of health shall mutually agree on the appointment  
 8 of a hearing examiner to preside at both hearings.

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

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

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

19 (5) The hearing examiner shall require the active  
 20 parties to submit, in writing, and serve upon the other  
 21 active parties, all direct testimony which they propose and  
 22 any studies, investigations, reports, or other exhibits that  
 23 any active party wishes the board to consider. These  
 24 written exhibits and any documents that the board itself  
 25 wishes to use or rely on shall be submitted and served in

1 like manner, at least 20 days prior to the date set for the  
 2 hearing. For good cause shown, the hearing examiner may  
 3 allow the introduction of new evidence at any time.

4 (6) The hearing examiner shall allow discovery which  
 5 shall be completed before the commencement of the hearing,  
 6 upon good cause shown and under such other conditions as the  
 7 hearing examiner shall prescribe.

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

13 (8) The hearing examiner shall issue a prehearing  
 14 order specifying the issues of fact and of law, identifying  
 15 the witnesses of the active parties, naming the public  
 16 witnesses and other interested parties who have submitted  
 17 written testimony in lieu of appearance, outlining the order  
 18 in which the hearing shall proceed, setting forth those  
 19 section 75-20-301 criteria as to which no issue of fact or  
 20 law has been raised which are to be conclusively presumed  
 21 and are not subject to further proof except for good cause  
 22 shown, and any other special rules to expedite the hearing  
 23 which the hearing examiner shall adopt with the approval of  
 24 the board.

25 (9) At the conclusion of the hearing, the hearing



1 examiner shall declare the hearing closed and shall, within  
 2 60 days of that date, prepare and submit to the board and in  
 3 the case of a conjunctive hearing, within 90 days to the  
 4 board and the board of health or department of health  
 5 proposed findings of fact, conclusions of law, and a  
 6 recommended decision.

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

14 (11) The board or hearing examiner may waive all or a  
 15 portion of the procedures set forth in subsections (2)  
 16 through (8) of this section to expedite the hearing for a  
 17 facility when the department has recommended approval of a  
 18 facility and no objections have been filed."

19 ~~Section 7. Section 75-20-301, MCA, is amended to read:~~  
 20 ~~"75-20-301. Decision of board. --- findings necessary~~  
 21 ~~for certification. --- (i) Within 60 days after submission of~~  
 22 ~~the recommended decision by the hearing examiner, the board~~  
 23 ~~shall make complete findings, issue an opinion, and render a~~  
 24 ~~decision upon the record, either granting or denying the~~  
 25 ~~application as filed or granting it upon such terms,~~

1 ~~conditions, or modifications of the construction, operation,~~  
 2 ~~or maintenance of the facility as the board considers~~  
 3 ~~appropriate.~~

4 ~~(2) The board may not grant a certificate either as~~  
 5 ~~proposed by the applicant or as modified by the board unless~~  
 6 ~~it shall find and determine:~~

7 ~~(a) the basis of the need for the facility;~~

8 ~~(b) the nature of the probable environmental impacts;~~

9 ~~(c) that the facility represents the minimum adverse~~  
 10 ~~environmental impacts, considering the state of available~~  
 11 ~~technology and the nature and economics of the various~~  
 12 ~~alternatives;~~

13 ~~(d) each of the criteria listed in 75-20-503;~~

14 ~~(e) in the case of an electric, gas, or liquid~~  
 15 ~~transmission line or aqueduct:~~

16 ~~(i) what part, if any, of the line or aqueduct shall~~  
 17 ~~be located underground;~~

18 ~~(ii) that the facility is consistent with regional~~  
 19 ~~plans for expansion of the appropriate grid of the utility~~  
 20 ~~systems serving the state and interconnected utility~~  
 21 ~~systems; and~~

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

24 ~~(f) that the location of the facility as proposed~~  
 25 ~~conforms to applicable state and local laws and regulations.~~

1 issued thereunder, except that the board may refuse to apply  
 2 any local law or regulation if it finds that, as applied to  
 3 the proposed facility, the law or regulation is unreasonably  
 4 restrictive in view of the existing technology, of factors  
 5 of cost or economics, or of the needs of consumers, whether  
 6 located inside or outside of the directly affected  
 7 government subdivisions;

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

10 (h) that the department of health or board of health  
 11 have issued a decision, opinion, order, certification, or  
 12 permit as required by 75-20-216(3) and

13 (i) that the use of public lands for location of the  
 14 facility was evaluated and public lands were selected  
 15 whenever their use is as economically practicable as the use  
 16 of private lands and compatible with the environmental  
 17 criteria listed in 75-20-503.

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

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

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

25 (c) the effects of the economic activity resulting

1 from the proposed facility;

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

4 (e) any other factors that it considers relevant;

5 (4) Considerations of need, public need, or public  
 6 convenience and necessity and demonstration thereof by the  
 7 applicant shall apply only to utility facilities, however,  
 8 natural gas or crude oil facilities as defined in subsection  
 9 (1)(c)(ii) of 75-20-104 that are interstate pipelines are  
 10 not utility facilities.

11 Section 7. Section 75-20-304, MCA, is amended to read:

12 "75-20-304. Waiver of provisions of certification  
 13 proceedings. (1) The board may waive compliance with any of  
 14 the provisions of 75-20-216 through 75-20-222, 75-20-501,  
 15 and this part if the applicant makes a clear and convincing  
 16 showing to the board at a public hearing that an immediate,  
 17 urgent need for a facility exists and that the applicant did  
 18 not have knowledge that the need for the facility existed  
 19 sufficiently in advance to fully comply with the provisions  
 20 of 75-20-216 through 75-20-222, 75-20-501, and this part.

21 (2) The board may waive compliance with any of the  
 22 provisions of this chapter upon receipt of notice by a  
 23 utility or person subject to this chapter that a facility or  
 24 associated facility has been damaged or destroyed as a  
 25 result of fire, flood, or other natural disaster or as the

1 result of insurrection, war, or other civil disorder and  
 2 there exists an immediate need for construction of a new  
 3 facility or associated facility or the relocation of a  
 4 previously existing facility or associated facility in order  
 5 to promote the public welfare.

6 (3) The board shall waive compliance with the  
 7 requirements of 75-20-214, subsections (2)(c), (3)(b), and  
 8 (3)(c) of 75-20-301, and 75-20-501(5) and the requirements  
 9 of subsections (1)(a)(iv) and (v) of 75-20-211,  
 10 75-20-216(3), and 75-20-303(3)(a)(iv) relating to  
 11 consideration of alternative sites if the applicant makes a  
 12 clear and convincing showing to the board at a public  
 13 hearing that:

14 (a) a proposed facility will be constructed in a  
 15 county where a single employer within the county has  
 16 permanently curtailed or ceased operations causing a loss of  
 17 250 or more permanent jobs WITHIN 2 YEARS at the employer's  
 18 operations within the preceding 10-year period;

19 (b) the county and municipal governing bodies in whose  
 20 jurisdiction the facility is proposed to be located support  
 21 by resolution such a waiver; and

22 (c) the proposed facility will be constructed within a  
 23 15-mile radius of the operations that have ceased or been  
 24 curtailed; AND

25 (d) THE PROPOSED FACILITY WILL HAVE A BENEFICIAL

1 EFFECT ON THE ECONOMY OF THE COUNTY IN WHICH THE FACILITY IS  
 2 PROPOSED TO BE LOCATED.

3 (4) The waiver provided for in subsection (3) applies  
 4 only to permanent job losses by a single employer. The  
 5 waiver provided for in subsection (3) does not apply to jobs  
 6 of a temporary or seasonal nature, including but not limited  
 7 to construction jobs or job losses during labor disputes.

8 ~~(5) THE WAIVER PROVIDED FOR IN SUBSECTION (3) DOES NOT~~  
 9 ~~APPLY TO CONSIDERATION OF ALTERNATIVES OR MINIMUM ADVERSE~~  
 10 ~~ENVIRONMENTAL IMPACT FOR A FACILITY DEFINED IN (B) OR (C)~~  
 11 ~~(B) OR (E) OR 75-20-104(10) OR FOR AN ASSOCIATED FACILITY~~  
 12 ~~DEFINED IN 75-20-104(3).~~

13 (5) THE WAIVER OF SUBSECTION (2)(C) OF 75-20-301 SHALL  
 14 APPLY ONLY TO CONSIDERATION OF ALTERNATIVE SITES FOR A  
 15 FACILITY DEFINED IN 75-20-104(10)(A).

16 (6) THE APPLICANT SHALL PAY ALL EXPENSES REQUIRED TO  
 17 PROCESS AND CONDUCT A HEARING ON A WAIVER REQUEST UNDER  
 18 SUBSECTION (3). HOWEVER, ANY PAYMENTS MADE UNDER THIS  
 19 SUBSECTION SHALL BE CREDITED TOWARD THE FEE PAID UNDER  
 20 75-20-215 TO THE EXTENT THE DATA OR EVIDENCE PRESENTED AT  
 21 THE HEARING OR THE DECISION OF THE BOARD UNDER SUBSECTION  
 22 (3) CAN BE USED IN MAKING A CERTIFICATION DECISION UNDER  
 23 THIS CHAPTER.

24 (7) THE BOARD MAY GRANT ONLY ONE WAIVER UNDER  
 25 SUBSECTIONS (3) AND (4) FOR EACH PERMANENT LOSS OF JOBS AS

1 DEFINED IN SUBSECTION (3)(A)."

2 Section 8. Section 75-20-406, MCA, is amended to read:  
3 "75-20-406. Judicial review of board, decision board  
4 of health, and department of health decisions. (1) Any  
5 active party as defined in 75-20-221 aggrieved by the final  
6 decision of the board on an application for a certificate  
7 may obtain judicial review of that decision by the filing of  
8 a petition in a state district court of competent  
9 jurisdiction.

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

13 (3) When the board of health or department of health  
14 conducts hearings pursuant to 75-20-216(3) and 75-20-218 and  
15 the applicant is granted a permit or certification, with or  
16 without conditions, pursuant to the laws administered by the  
17 department of health and the board of health and this  
18 chapter, the decision may only be appealed in conjunction  
19 with the final decision of the board as provided in  
20 75-20-406(1) and (2). If a permit or certification is denied  
21 by the department of health or the board of health, the  
22 applicant may:

23 (a) appeal the denial under the appellate review  
24 procedures provided in the laws administered by the  
25 department of health and the board of health; or

1 (b) reserve the right to appeal the denial by the  
2 department of health or the board of health until after the  
3 board has issued a final decision.

4 (4) Nothing in this section may be construed to  
5 prohibit the board from holding a hearing as herein provided  
6 on all matters that are not the subject of a pending appeal  
7 by the applicant under 75-20-406(3)(a)."

8 ~~NEW SECTION. Section 18. Applicability. [Sections 1~~  
9 ~~and 7] do not apply to any pipeline facility for which a~~  
10 ~~contract for the preparation of an environmental impact~~  
11 ~~analysis has been entered into with any agency of the state~~  
12 ~~of Montana prior to January 1, 1981.~~

13 Section 9. Effective date. This act is effective on  
14 passage and approval.

-End-

1 SENATE BILL NO. 376

2 INTRODUCED BY S. BROWN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
5 THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE  
6 EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE  
7 DEFINITION OF A FACILITY; ~~INCLUDING--MAJOR--PIPELINES--AS--A~~  
8 FACILITY EXEMPTING FACILITIES SUBJECT TO THE MONTANA STRIP  
9 AND UNDERGROUND MINE RECLAMATION ACT; EXPANDING EXEMPTION  
10 CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF  
11 A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES;  
12 CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND  
13 ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND  
14 ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD  
15 TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND  
16 MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A  
17 FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS  
18 EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT  
19 CLOSURE; ~~PROVIDING--FOR--APPLICABILITY--OF--SECTIONS--AFFECTING~~  
20 MAJOR-PIPELINES; AMENDING SECTIONS 75-20-104, 75-20-202,  
21 75-20-211, 75-20-216, 75-20-218, 75-20-220, ~~75-20-301~~  
22 75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE  
23 EFFECTIVE DATE."

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

2 "75-20-104. Definitions. In this chapter, unless the  
3 context requires otherwise, the following definitions apply:

4 (1) "Addition thereto" means the installation of new  
5 machinery and equipment which would significantly change the  
6 conditions under which the ~~certificate-was-issued~~ facility  
7 is operated.

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

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

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

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

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

1 (7) "Commence to construct" means:

2 (a) any clearing of land, excavation, construction, or  
3 other action that would affect the environment of the site  
4 or route of a facility but does not mean changes needed for  
5 temporary use of sites or routes for nonutility purposes or  
6 uses in securing geological data, including necessary  
7 borings to ascertain foundation conditions;

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

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

18 (d) the relocation or upgrading of an existing  
19 facility defined by (b) or (c) of subsection (10), including  
20 upgrading to a design capacity covered by subsection  
21 (10)(b); except that ~~the term~~ does not include normal  
22 maintenance or repair of an existing facility.

23 (8) "Department" means the department of natural  
24 resources and conservation provided for in Title 2, chapter  
25 15, part 33.

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

4 (10) "Facility" means:

5 (a) except for crude oil and natural gas refineries,  
6 and facilities and associated facilities designed for or  
7 capable of producing, gathering, processing, transmitting,  
8 transporting, or distributing crude oil or natural gas, AND  
9 THOSE FACILITIES SUBJECT TO THE MONTANA STRIP AND  
10 UNDERGROUND MINE RECLAMATION ACT, each plant, unit, or other  
11 facility and associated facilities designed for or capable  
12 of:

13 (i) generating 50 megawatts of electricity or more or  
14 any addition thereto (except pollution control facilities  
15 approved by the department of health and environmental  
16 sciences added to an existing plant) having an estimated  
17 cost in excess of \$250,000 ~~\$750,000~~ \$10 MILLION;

18 (ii) producing 25 million cubic feet or more of gas  
19 derived from coal per day or any addition thereto having an  
20 estimated cost in excess of \$250,000 ~~\$750,000~~ \$10 MILLION;

21 (iii) producing 25,000 barrels of liquid hydrocarbon  
22 products per day or more or any addition thereto having an  
23 estimated cost in excess of \$250,000 ~~\$750,000~~ \$10 MILLION;

24 (iv) enriching uranium minerals or any addition thereto  
25 having an estimated cost in excess of \$250,000 ~~\$750,000~~ \$10

1 MILLION; or

2 (v) ~~utilizing, refining, or converting 500,000 tons of~~  
 3 ~~coal per year or more or any addition thereto, EXCEPT THOSE~~  
 4 ~~FACILITIES SUBJECT TO THE MONTANA STRIP AND~~  
 5 ~~UNDERGROUND MINE RECLAMATION ACT,~~ having an estimated cost  
 6 in excess of ~~\$250,000 \$750,000~~ \$10 MILLION;

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

13 (c) each pipeline and associated facilities:

14 ~~iii--designed--for--or--capable--of--transporting--water,~~  
 15 ~~water--used--as--the--medium--for--the--transport--of--other~~  
 16 ~~materials, natural gas, or crude oil and of a design~~  
 17 ~~capacity greater than 20 inches in diameter and 30 miles or~~  
 18 ~~greater in length or~~

19 ~~iii~~ designed for or capable of transporting gas  
 20 (except for natural gas), water, or liquid hydrocarbon  
 21 products from or to a facility located within or without  
 22 this state of the size indicated in subsection (10)(a) of  
 23 this section;

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

1 creation, use, or conversion of energy, designed for or  
 2 capable of producing geothermally derived power equivalent  
 3 to 25 million Btu per hour or more or any addition thereto  
 4 having an estimated cost in excess of ~~\$250,000~~ \$750,000;

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

6 (11) "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 (12) "Transmission substation" means any structure,  
 11 device, or equipment assemblage, commonly located and  
 12 designed for voltage regulation, circuit protection, or  
 13 switching necessary for the construction or operation of a  
 14 proposed transmission line.

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

19 Section 2. Section 75-20-202, MCA, is amended to read:

20 "75-20-202. Exemptions. (1) This chapter does not  
 21 apply to any aspect of a facility over which an agency of  
 22 the federal government has exclusive jurisdiction, but  
 23 applies to any unpreempted aspect of a facility over which  
 24 an agency of the federal government has partial  
 25 jurisdiction.

1 (2) A certificate is not required under this chapter  
2 for a facility under diligent onsite physical construction  
3 or in operation on January 1, 1973.

4 (3) The board may adopt reasonable rules establishing  
5 exemptions from this chapter for the relocation,  
6 reconstruction, or upgrading of a facility that:

7 (a) would otherwise be covered by this chapter; and  
8 (b) that is unlikely to have a significant  
9 environmental impact by reason of length, size, location,  
10 available space or right-of-way, or construction methods;  
11 or

12 (c) utilizes coal, wood, biomass, grain, wind, or sun  
13 as a fuel source and the technology of which will result in  
14 greater efficiency, promote energy conservation, and promote  
15 greater system reliability than the existing facility."

16 Section 3. Section 75-20-211, MCA, is amended to read:

17 "75-20-211. Application -- filing and contents --  
18 proof of service and notice. (1) (a) An applicant shall file  
19 with the department and department of health a joint  
20 application for a certificate under this chapter and for the  
21 permits required ~~by state air and water quality laws under~~  
22 the laws administered by the department of health and the  
23 board of health in such form as the board requires under  
24 applicable rules, containing the following information:

25 (i) a description of the location and of the facility

1 to be built thereon;

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

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

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

10 (v) baseline data for the primary and reasonable  
11 alternate locations;

12 (vi) at the applicant's option, an environmental study  
13 plan to satisfy the requirements of this chapter; and

14 (vii) such other information as the applicant considers  
15 relevant or as the board and board of health by order or  
16 rule or the department and department of health by order or  
17 rule may require.

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

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



1           (3) An application shall be accompanied by proof of  
 2 service of a copy of the application on the chief executive  
 3 officer of each unit of local government, county  
 4 commissioner, city or county planning boards, and federal  
 5 agencies charged with the duty of protecting the environment  
 6 or of planning land use in the area in which any portion of  
 7 the proposed facility may be located, both as primarily and  
 8 as alternatively proposed and on the following state  
 9 government agencies:

- 10           (a) environmental quality council;
- 11           (b) department of public service regulation;
- 12           (c) department of fish, wildlife, and parks;
- 13           (d) department of state lands;
- 14           (e) department of community affairs;
- 15           (f) department of highways;
- 16           (g) department of revenue.

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

20           (5) An application shall also be accompanied by proof  
 21 that public notice thereof was given to persons residing in  
 22 the area or alternative areas in which any portion of the  
 23 proposed facility may be located, by publication of a  
 24 summary of the application in those newspapers that will  
 25 substantially inform those persons of the application."

1           Section 4. 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) After receipt  
 4 of an application, the department and department of health  
 5 shall within 90 days notify the applicant in writing that:

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

8           (b) the application is not in compliance and list the  
 9 deficiencies therein; and upon correction of these  
 10 deficiencies and resubmission by the applicant, the  
 11 department and department of health shall within 30 days  
 12 notify the applicant in writing that the application is in  
 13 compliance and is accepted as complete.

14           (2) Upon receipt of an application complying with  
 15 75-20-211 through 75-20-215, and this section, the  
 16 department shall commence an intensive study and evaluation  
 17 of the proposed facility and its effects, considering all  
 18 applicable criteria listed in 75-20-301 and 75-20-503 and  
 19 the department of health shall commence a study to enable it  
 20 or the board of health to issue a decision, opinion, order,  
 21 certification, or permit as provided in subsection (3). The  
 22 department and department of health shall use, to the extent  
 23 they consider applicable, valid and useful existing studies  
 24 and reports submitted by the applicant or compiled by a  
 25 state or federal agency.

1           (3) The department of health shall within 1 year  
 2 following the date of acceptance of an application, and the  
 3 board of health or department of health, if applicable,  
 4 within an additional 6 months, issue any decision, opinion,  
 5 order, certification, or permit required by ~~state or federal~~  
 6 ~~air and water quality laws~~ under the laws administered by  
 7 the department of health or the board of health and this  
 8 chapter. The department of health and the board of health  
 9 shall determine compliance with ~~air and water quality~~  
 10 ~~standards~~ all standards, permit requirements, and  
 11 implementation plans under their jurisdiction for the  
 12 primary and reasonable alternate locations in their  
 13 decision, opinion, order, certification, or permit. The  
 14 decision, opinion, order, certification, or permit, with or  
 15 without conditions, is conclusive on all matters of ~~air and~~  
 16 ~~water quality impacts under the federal and state air and~~  
 17 ~~water quality statutes~~ that the department of health and  
 18 board of health administer, and any of the criteria  
 19 specified in subsections (2) through (7) of 75-20-503~~(4) and~~  
 20 ~~(4)~~ that are a part of the determinations made under ~~federal~~  
 21 ~~and state air and water quality statutes~~ the laws  
 22 administered by the department of health and the board of  
 23 health. Although the decision, opinion, order,  
 24 certification, or permit issued under this subsection is  
 25 conclusive, the board retains authority to make the

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

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

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

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

18 Section 5. Section 75-20-218, MCA, is amended to read:  
 19 "75-20-218. Hearing date -- location -- department to  
 20 act as staff -- hearings to be held jointly. (1) Upon  
 21 receipt of the department's report submitted under  
 22 75-20-216, the board shall set a date for a hearing to begin  
 23 not more than 120 days after the receipt. Except for those  
 24 hearings involving applications submitted for facilities as  
 25 defined in (b) and (c) of 75-20-104(10), certification

1 hearings shall be conducted by the board in the county seat  
 2 of Lewis and Clark County or the county in which the  
 3 facility or the greater portion thereof is to be located.

4 (2) Except as provided in 75-20-221(2), the department  
 5 shall act as the staff for the board throughout the  
 6 decisionmaking process and the board may request the  
 7 department to present testimony or cross-examine witnesses  
 8 as the board considers necessary and appropriate.

9 (3) At the request of the applicant, the ~~duty~~  
 10 ~~authorized--state--air-and-water-quality-agencies~~ department  
 11 of health and the board of health shall hold any required  
 12 permit hearings required under laws administered by those  
 13 agencies in conjunction with the board certification  
 14 hearing. In such a conjunctive hearing the time periods  
 15 established for reviewing an application and for issuing a  
 16 decision on certification of a proposed facility under this  
 17 chapter supersede the time periods specified in other laws  
 18 administered by the ~~duty--authorized--state-air-and-water~~  
 19 ~~quality-agencies~~ department of health and the board of  
 20 health."

21 Section 6. Section 75-20-220, MCA, is amended to read:  
 22 "75-20-220. Hearing examiner -- restrictions --  
 23 duties. (1) If the board appoints a hearing examiner to  
 24 conduct any certification proceedings under this chapter,  
 25 the hearing examiner may not be a member of the board, an

1 employee of the department, or a member or employee of the  
 2 department of health or board of health. A hearing examiner,  
 3 if any, shall be appointed by the board within 20 days after  
 4 the department's report has been filed with the board. If a  
 5 hearing is held before the board of health or the department  
 6 of health, the board and the board of health or the  
 7 department of health shall mutually agree on the appointment  
 8 of a hearing examiner to preside at both hearings.

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

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

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

19 (5) The hearing examiner shall require the active  
 20 parties to submit, in writing, and serve upon the other  
 21 active parties, all direct testimony which they propose and  
 22 any studies, investigations, reports, or other exhibits that  
 23 any active party wishes the board to consider. These  
 24 written exhibits and any documents that the board itself  
 25 wishes to use or rely on shall be submitted and served in

1 like manner, at least 20 days prior to the date set for the  
 2 hearing. For good cause shown, the hearing examiner may  
 3 allow the introduction of new evidence at any time.

4 (6) The hearing examiner shall allow discovery which  
 5 shall be completed before the commencement of the hearing,  
 6 upon good cause shown and under such other conditions as the  
 7 hearing examiner shall prescribe.

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

13 (8) The hearing examiner shall issue a prehearing  
 14 order specifying the issues of fact and of law, identifying  
 15 the witnesses of the active parties, naming the public  
 16 witnesses and other interested parties who have submitted  
 17 written testimony in lieu of appearance, outlining the order  
 18 in which the hearing shall proceed, setting forth those  
 19 section 75-20-301 criteria as to which no issue of fact or  
 20 law has been raised which are to be conclusively presumed  
 21 and are not subject to further proof except for good cause  
 22 shown, and any other special rules to expedite the hearing  
 23 which the hearing examiner shall adopt with the approval of  
 24 the board.

25 (9) At the conclusion of the hearing, the hearing

1 examiner shall declare the hearing closed and shall, within  
 2 60 days of that date, prepare and submit to the board and in  
 3 the case of a conjunctive hearing, within 90 days to the  
 4 board and the board of health or department of health  
 5 proposed findings of fact, conclusions of law, and a  
 6 recommended decision.

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

14 (11) The board or hearing examiner may waive all or a  
 15 portion of the procedures set forth in subsections (2)  
 16 through (8) of this section to expedite the hearing for a  
 17 facility when the department has recommended approval of a  
 18 facility and no objections have been filed."

19 Section 7\*--Section 75-28-301\*--MGA\*--is amended to read\*  
 20 "75-28-301\*--Decision of board----findings--necessary  
 21 for--certification\*--(i) Within 60 days after submission of  
 22 the recommended decision by the hearing examiner, the board  
 23 shall make complete findings, issue an opinion, and render a  
 24 decision upon the record, either granting or denying the  
 25 application as filed or granting it upon such terms

1 conditions, or modifications of the construction, operation,  
 2 or maintenance of the facility as the board considers  
 3 appropriate.

4 (2) The board may not grant a certificate either as  
 5 proposed by the applicant or as modified by the board unless  
 6 it shall find and determine:

7 (a) the basis of the need for the facility;  
 8 (b) the nature of the probable environmental impacts;  
 9 (c) that the facility represents the minimum adverse  
 10 environmental impact, considering the state of available  
 11 technology and the nature and economics of the various  
 12 alternatives;

13 (d) each of the criteria listed in 75-28-503;  
 14 (e) in the case of an electric, gas, or liquid  
 15 transmission line or aqueduct:

16 (i) what part, if any, of the line or aqueduct shall  
 17 be located underground;

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

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

24 (f) that the location of the facility as proposed  
 25 conforms to applicable state and local laws and regulations.

1 issued thereunder except that the board may refuse to apply  
 2 any local law or regulation if it finds that as applied to  
 3 the proposed facility the law or regulation is unreasonably  
 4 restrictive in view of the existing technology or of factors  
 5 of cost or economics or of the needs of consumers whether  
 6 located inside or outside of the directly affected  
 7 government subdivisions

8 (g) that the facility will serve the public interest  
 9 convenience and necessity

10 (h) that the department of health or board of health  
 11 have issued a decision, opinion, order, certification or  
 12 permit as required by 75-20-216(3) and

13 (i) that the use of public lands for location of the  
 14 facility was evaluated and public lands were selected  
 15 whenever their use is as economically practicable as the use  
 16 of private lands and compatible with the environmental  
 17 criteria listed in 75-20-503.

18 (3) in determining that the facility will serve the  
 19 public interest, convenience and necessity under subsection

20 (2)(g) of this section, the board shall consider:

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

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

25 (c) the effects of the economic activity resulting

1 from the proposed facility;

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

4 (e) any other factors that it considers relevant;

5 (4) Considerations of need, public need, or public  
 6 convenience and necessity and demonstration thereof by the  
 7 applicant shall apply only to utility facilities, ~~however,~~  
 8 ~~natural gas or crude oil facilities as defined in subsection~~  
 9 ~~(10)(e)(i) of 75-20-104 that are interstate pipelines are~~  
 10 ~~not utility facilities."~~

11 Section 7. Section 75-20-304, MCA, is amended to read:

12 "75-20-304. Waiver of provisions of certification  
 13 proceedings. (1) The board may waive compliance with any of  
 14 the provisions of 75-20-216 through 75-20-222, 75-20-501,  
 15 and this part if the applicant makes a clear and convincing  
 16 showing to the board at a public hearing that an immediate,  
 17 urgent need for a facility exists and that the applicant did  
 18 not have knowledge that the need for the facility existed  
 19 sufficiently in advance to fully comply with the provisions  
 20 of 75-20-216 through 75-20-222, 75-20-501, and this part.

21 (2) The board may waive compliance with any of the  
 22 provisions of this chapter upon receipt of notice by a  
 23 utility or person subject to this chapter that a facility or  
 24 associated facility has been damaged or destroyed as a  
 25 result of fire, flood, or other natural disaster or as the

1 result of insurrection, war, or other civil disorder and  
 2 there exists an immediate need for construction of a new  
 3 facility or associated facility or the relocation of a  
 4 previously existing facility or associated facility in order  
 5 to promote the public welfare.

6 (3) The board shall waive compliance with the  
 7 requirements of 75-20-214, subsections (2)(c), (3)(b), and  
 8 (3)(c) of 75-20-301, and 75-20-501(5) and the requirements  
 9 of subsections (1)(a)(iv) and (v) of 75-20-211,  
 10 75-20-216(3), and 75-20-303(3)(a)(iv) relating to  
 11 consideration of alternative sites if the applicant makes a  
 12 clear and convincing showing to the board at a public  
 13 hearing that:

14 (a) a proposed facility will be constructed in a  
 15 county where a single employer within the county has  
 16 permanently curtailed or ceased operations causing a loss of  
 17 250 or more permanent jobs WITHIN 2 YEARS at the employer's  
 18 operations within the preceding 10-year period;

19 (b) the county and municipal governing bodies in whose  
 20 jurisdiction the facility is proposed to be located support  
 21 by resolution such a waiver; and

22 (c) the proposed facility will be constructed within a  
 23 15-mile radius of the operations that have ceased or been  
 24 curtailed; AND

25 (d) THE PROPOSED FACILITY WILL HAVE A BENEFICIAL

1 EFFECT ON THE ECONOMY OF THE COUNTY IN WHICH THE FACILITY IS  
 2 PROPOSED TO BE LOCATED.

3 (4) The waiver provided for in subsection (3) applies  
 4 only to permanent job losses by a single employer. The  
 5 waiver provided for in subsection (3) does not apply to jobs  
 6 of a temporary or seasonal nature, including but not limited  
 7 to construction jobs or job losses during labor disputes.

8 ~~(5) THE WAIVER PROVIDED FOR IN SUBSECTION (3) DOES NOT~~  
 9 ~~APPLY TO CONSIDERATION OF ALTERNATIVES OR MINIMUM ADVERSE~~  
 10 ~~ENVIRONMENTAL IMPACT FOR A FACILITY DEFINED IN (B), (C),~~  
 11 ~~(D), OR (E) OR 75-20-104(10) OR FOR AN ASSOCIATED FACILITY~~  
 12 ~~DEFINED IN 75-20-104(3).~~

13 ~~(5) THE WAIVER OF SUBSECTION (2)(E) OF 75-20-301 SHALL~~  
 14 ~~APPLY ONLY TO CONSIDERATION OF ALTERNATIVE SITES FOR A~~  
 15 ~~FACILITY DEFINED IN 75-20-104(10)(A).~~

16 (5) THE WAIVER PROVIDED FOR IN SUBSECTION (3) DOES NOT  
 17 APPLY TO CONSIDERATION OF ALTERNATIVES OR MINIMUM ADVERSE  
 18 ENVIRONMENTAL IMPACT FOR A FACILITY DEFINED IN SUBSECTIONS  
 19 (10)(B), (C), (D), OR (E) OF 75-20-104, FOR AN ASSOCIATED  
 20 FACILITY DEFINED IN SUBSECTION (3) OF 75-20-104 OR FOR ANY  
 21 PORTION OF OR PROCESS IN A FACILITY DEFINED IN SUBSECTION  
 22 (10)(A) OF 75-20-104 TO THE EXTENT THAT THE PROCESS OR  
 23 PORTION OF THE FACILITY IS NOT SUBJECT TO A PERMIT ISSUED BY  
 24 THE DEPARTMENT OF HEALTH OR BOARD OF HEALTH.

25 (6) THE APPLICANT SHALL PAY ALL EXPENSES REQUIRED TO

1 PROCESS AND CONDUCT A HEARING ON A WAIVER REQUEST UNDER  
 2 SUBSECTION (3). HOWEVER, ANY PAYMENTS MADE UNDER THIS  
 3 SUBSECTION SHALL BE CREDITED TOWARD THE FEE PAID UNDER  
 4 75-20-215 TO THE EXTENT THE DATA OR EVIDENCE PRESENTED AT  
 5 THE HEARING OR THE DECISION OF THE BOARD UNDER SUBSECTION  
 6 (3) CAN BE USED IN MAKING A CERTIFICATION DECISION UNDER  
 7 THIS CHAPTER.

8 (7) THE BOARD MAY GRANT ONLY ONE WAIVER UNDER  
 9 SUBSECTIONS (3) AND (4) FOR EACH PERMANENT LOSS OF JOBS AS  
 10 DEFINED IN SUBSECTION (3)(A)."

11 Section 8. Section 75-20-406, MCA, is amended to read:  
 12 "75-20-406. Judicial review of board, decision board  
 13 of health, and department of health decisions. (1) Any  
 14 active party as defined in 75-20-221 aggrieved by the final  
 15 decision of the board on an application for a certificate  
 16 may obtain judicial review of that decision by the filing of  
 17 a petition in a state district court of competent  
 18 jurisdiction.

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

22 (3) When the board of health or department of health  
 23 conducts hearings pursuant to 75-20-216(3) and 75-20-218 and  
 24 the applicant is granted a permit or certification, with or  
 25 without conditions, pursuant to the laws administered by the

1 department of health and the board of health and this  
 2 chapter, the decision may only be appealed in conjunction  
 3 with the final decision of the board as provided in  
 4 75-20-406(1) and (2). If a permit or certification is denied  
 5 by the department of health or the board of health, the  
 6 applicant may:

7 (a) appeal the denial under the appellate review  
 8 procedures provided in the laws administered by the  
 9 department of health and the board of health; or

10 (b) reserve the right to appeal the denial by the  
 11 department of health or the board of health until after the  
 12 board has issued a final decision.

13 (4) Nothing in this section may be construed to  
 14 prohibit the board from holding a hearing as herein provided  
 15 on all matters that are not the subject of a pending appeal  
 16 by the applicant under 75-20-406(3)(a)."

17 ~~NEW SECTION--Section 10--Applicability--[Sections--1~~  
 18 ~~and--7]--do--not--apply--to--any--pipeline--facility--for--which--a~~  
 19 ~~contract--for--the--preparation--of--an--environmental--impact~~  
 20 ~~analysis--has--been--entered--into--with--any--agency--of--the--state~~  
 21 ~~of--Montana--prior--to--January--17--1981.~~

22 Section 9. Effective date. This act is effective on  
 23 passage and approval.

-End-



FREE JOINT CONFERENCE COMMITTEE REPORT NO. 1  
ON SENATE BILL NO. 376

MR. PRESIDENT AND MR. SPEAKER:

We, your Free Joint Conference Committee on Senate Bill No. 376, met April 15, 1981, and considered:

1. House Natural Resources Amendments to the third reading copy dated March 27, 1981, and
2. House Amendments to Senate Bill 376.

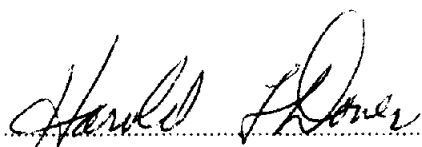
We recommend that:

1. The Senate accede to Committee amendment numbers 1 through 9 and the second part of amendment number 10 designated subsection (6) and the House recede from the first part of amendment number 10 designated subsection (5);
2. The Senate accede to House amendments number 1 and 3 and the House recede from House amendment number 2;
3. Senate Bill No. 376 be further amended as indicated in CLERICAL INSTRUCTION number 1;
4. The reference copy of Senate Bill No. 376 read as specified in the CLERICAL INSTRUCTIONS;
5. The Conference Committee Report to Senate Bill No. 376 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 22, lines 13 through 15.  
Following: line 12  
Strike: lines 13 through 15  
Insert: "(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10) (b), (c), (d), or (e) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104 or for any portion of or process in a facility defined in subsection (10) (a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health."

(CONTINUED)



Chairman.

April 15, ..... 19...81..

PAGE 2 - SB 376

FOR THE SENATE:

*Harold Dover*  
DOVER

*Steve Brown*  
S. BROWN

*Thomas H. Keating*  
KEATING

FOR THE HOUSE:

*Herrn H. Mueller*  
MUELLER

*Dave Brown*  
D. BROWN

BURNETT

House amendments to Senate Bill 376:

1. Page 21, line 14.

Following: "jobs"

Insert: "within two years"

2. amendment to amendment #10 on House Natural Resources Committee amendments of 3/27/81.

Strike: subsection (5) of Insert

Insert: "(5) The waiver of subsection (2)(c) of 75-20-301 shall apply only to consideration of alternative sites for a facility defined in 75-20-104 (10) (a)."

3. amendment to amendment #10 on House Natural Resources Committee amendments of 3/27/81.

Following: line 13 of Insert

Insert: "(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3) (a)."

HOUSE NATURAL RESOURCES AMENDMENTS TO SB 376

March 27, 1981

1. Title, line 7.  
Following: "FACILITY"  
Strike: "INCLUDING"
2. Page 4, line 8.  
Following: "gas,"  
Insert: "and those facilities subject to the Montana Strip- and Underground-Mine Reclamation Act,"
3. Page 5, line 1.  
Following: "thereto"  
Strike: ", EXCEPT THOSE FACILITIES SUBJECT TO THE MONTANA STRIP- AND UNDERGROUND-MINE RECLAMATION ACT,"
4. Pages 17 through 20.  
Following: line 16 on page 17  
Strike: the entire section 7  
Re-number: subsequent sections.
5. Page 21, line 5.  
Following: "of"  
Strike: "75-20-214,"
6. Page 21, line 6.  
Following: "75-20-501"  
Insert: "(5)"
7. Page 21, line 18.  
Following: " ; "  
Strike: "and"
8. Page 21, line 21.  
Following: "curtailed"  
Strike: "."  
Insert: " ; and"
9. Page 21.  
Following: line 21  
Insert: "(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located."
10. Page 22.  
Following: line 1  
Insert: "(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in (b), (c), (d), or (e) of 75-20-104(10) or for an associated facility defined in 75-20-104(3).  
(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter."