

SENATE BILL NO. 275

Introduced: 01/24/83

Referred to Committee Natural Resources: 01/24/83

Hearing: 2/2/83

Report: 02/15/83, Do Pass, As Amended

2nd Reading: 02/17/83

3rd Reading: 02/21/83

Bill Killed.

1 *Senate Bill No. 275*
 2 INTRODUCED BY *Deating, Palm, Shaw, Trent*
 3 *Chapman, Cullen, Feltz, M. Hanson*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; REDEFINING
 6 UTILITY; SPECIFYING THAT A CERTIFICATE OF PUBLIC NEED IS NOT
 7 REQUIRED FOR A NONUTILITY FACILITY; DELETING THE REQUIREMENT
 8 FOR ALTERNATE SITE STUDIES AND ALTERNATE ENERGY STUDIES;
 9 REDUCING TIMES ALLOWED FOR EVALUATION OF STUDIES; SPECIFYING
 10 HOW FEES PAID ARE TO BE USED; DIRECTING FINES AND PENALTIES
 11 TO BE PAID TO THE GENERAL FUND; AMENDING SECTIONS 75-20-102,
 12 75-20-104, 75-20-105, 75-20-112, 75-20-201, 75-20-211
 13 THROUGH 75-20-220, 75-20-222, 75-20-301, 75-20-303,
 14 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-408,
 15 75-20-501 THROUGH 75-20-503, 75-20-1202, AND 75-20-1205; AND
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Section 75-20-102, MCA, is amended to read:

20 "75-20-102. Policy and legislative findings. (1) It is
 21 the constitutionally declared policy of this state to
 22 maintain and improve a clean and healthful environment for
 23 present and future generations, to protect the environmental
 24 life-support system from degradation and prevent
 25 unreasonable depletion and degradation of natural resources,

1 and to provide for administration and enforcement to attain
 2 these objectives.

3 (2) The legislature finds that the construction of
 4 additional power or energy conversion facilities may be
 5 necessary to meet the increasing need for electricity,
 6 energy, and other products and that these facilities have an
 7 effect on the environment, an impact on population
 8 concentration, and an effect on the welfare of the citizens
 9 of this state. Therefore, it is necessary to ensure that the
 10 location, construction, and operation of power and energy
 11 conversion facilities will produce minimal adverse effects
 12 on the environment and upon the citizens of this state by
 13 providing that a power or energy conversion facility may not
 14 be constructed or operated within this state without a
 15 certificate of environmental compatibility and public need
 16 acquired pursuant to this chapter."

17 Section 2. Section 75-20-104, MCA, is amended to read:

18 "75-20-104. Definitions. In this chapter, unless the
 19 context requires otherwise, the following definitions apply:

20 (1) "Addition thereto" means the installation of new
 21 machinery and equipment which would significantly change the
 22 conditions under which the facility is operated.

23 (2) "Application" means an application for a
 24 certificate submitted in accordance with this chapter and
 25 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 located in Montana, 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 or, in the case of a utility, a 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 other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future

development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

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

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection ~~(10)~~ (11), including upgrading to a design capacity covered by subsection ~~(10)~~ (11)(b), except that the term does not include normal maintenance or repair of an existing facility.

~~(8) "Cost" means the estimated cost in dollars at the time of proposed construction of a facility or associated facility located in Montana.~~

~~(9)~~ (9) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

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

~~(11)~~ (11) "Facility" means:

(a) except for crude oil and natural gas refineries,

and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

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

(ii) producing 25 million cubic feet or more of pipeline quality gas derived from coal per day or any addition thereto ~~having an estimated cost in excess of \$10 million;~~

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

(iv) enriching uranium minerals or any addition thereto ~~having an estimated cost in excess of \$10 million;~~ or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto ~~having an estimated cost in excess of \$10 million;~~

(b) each electric transmission line and associated

facilities of a design capacity of more than ~~69~~ 115 kilovolts, ~~except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and more than 10 miles or less in length;~~

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection ~~(10)~~ (11)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million btu per hour or more or any addition thereto ~~having an estimated cost in excess of \$750,000;~~

(e) any underground in situ gasification of coal.

~~(12)~~ (12) "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(13)~~ (13) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a

1 proposed transmission line.

2 ~~{13}~~ (14) "Utility" means any person engaged in any
3 aspect of the production, storage, sale, delivery, or
4 furnishing of heat, electricity, gas, hydrocarbon products,
5 or energy in any form for ultimate public use a person
6 furnishing energy within Montana and subject to rate of
7 return or rate regulation by a state or federal regulatory
8 body or protected from competition through a guaranteed
9 monopoly of service in a given service area."

10 Section 3. Section 75-20-105, MCA, is amended to read:

11 "75-20-105. Adoption of rules. The board may adopt
12 rules implementing the provisions of this chapter, including
13 but not limited to:

14 ~~{1}~~ rules governing the form and content of
15 applications;

16 ~~{2}~~ rules further defining the terms used in this
17 chapter;

18 ~~{3}~~ rules governing the form and content of long-range
19 plans;

20 ~~{4}~~ any other rules the board considers necessary to
21 accomplish the purposes and objectives of this chapter."

22 Section 4. Section 75-20-112, MCA, is amended to read:

23 "75-20-112. Moneys to earmarked revenue fund. All
24 fees, taxes, fines, and penalties collected under this
25 chapter shall be deposited in the earmarked revenue fund for

1 use by the department in carrying out its functions and
2 responsibilities under this chapter."

3 Section 5. Section 75-20-201, MCA, is amended to read:

4 "75-20-201. Certificate required -- operation in
5 conformance -- approval by popular vote of certificate for
6 nuclear facility. (1) A person may not commence to construct
7 a facility in the state without first applying for and
8 obtaining a certificate of environmental compatibility and
9 public need issued with respect to the facility by the
10 board.

11 (2) A facility with respect to which a certificate is
12 issued may not thereafter be constructed, operated, or
13 maintained except in conformity with the certificate and any
14 terms, conditions, and modifications contained therein.

15 (3) A certificate may only be issued pursuant to this
16 chapter.

17 (4) If the board decides to issue a certificate for a
18 nuclear facility, it shall report such recommendation to the
19 applicant and may not issue the certificate until such
20 recommendation is approved by a majority of the voters in a
21 statewide election called by initiative or referendum
22 according to the laws of this state."

23 Section 6. Section 75-20-211, MCA, is amended to read:

24 "75-20-211. Application -- filing and contents --
25 proof of service and notice. (1) (a) An applicant shall file

1 with the department and department of health a joint
2 application for a certificate under this chapter and for the
3 permits required under the laws administered by the
4 department of health and the board of health in such form as
5 the board requires under applicable rules, containing the
6 following information:

7 (i) a description of the location and of the facility
8 to be built thereon;

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

11 ~~{iii}-a-statement-explaining-the-need-for-the-facility;~~

12 ~~{iv}{iii} for facilities described in 75-20-104(1)(b);~~

13 a description of reasonable alternate locations for the
14 proposed facility, a general description of the comparative
15 merits and detriments of each location submitted, and a
16 statement of the reasons why the primary proposed location
17 is best suited for the facility;

18 ~~{v}{iv} baseline data for the primary-and-reasonable~~
19 ~~alternate-locations location;~~

20 ~~{vi}{v}~~ at the applicant's option, an environmental
21 study plan to satisfy the requirements of this chapter; and

22 ~~{vii}{vi}~~ such other relevant information as the
23 applicant ~~considers--relevant~~ submits or as the board and
24 board of health by order or rule or the department and
25 department of health by order or rule may require.

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

5 (2) An application may consist of an application for
6 two or more facilities in combination which are physically
7 and directly attached to each other and are operationally a
8 single operating entity.

9 (3) An application shall be accompanied by proof of
10 service of a copy of the application on the chief executive
11 officer of each unit of local government, county
12 commissioner, city or county planning boards, and federal
13 agencies charged with the duty of protecting the environment
14 or of planning land use in the area in which any portion of
15 the proposed facility may be located, ~~both-as-priority--and~~
16 ~~as---alternatively--proposed~~ and on the following state
17 government agencies:

18 (a) environmental quality council;

19 (b) department of public service regulation;

20 (c) department of fish, wildlife, and parks;

21 (d) department of state lands;

22 (e) department of commerce;

23 (f) department of highways;

24 (g) department of revenue.

25 (4) The copy of the application shall be accompanied

by a notice specifying the date on or about which the application is to be filed.

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

Section 7. Section 75-20-212, MCA, is amended to read:

"75-20-212. Cure for failure of service. ~~inadvertent failure~~ Failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

Section 8. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department,

the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department ~~determines documents to the applicant as necessary, or the department may require a new application and filing fee.~~

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive."

Section 9. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104~~(10)~~ (11) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its ~~preferred location, a description of reasonable alternative locations,~~ and such available and relevant information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5%

1 reduction of the filing fee required under 75-20-215."

2 Section 10. Section 75-20-215, MCA, is amended to
3 read:

4 "75-20-215. Filing fee -- accountability -- refund --
5 use. (1) (a) A filing fee shall be deposited in the
6 earmarked revenue fund for the use of the department in
7 administering this chapter. The applicant shall pay to the
8 department a filing fee as provided in this section based
9 upon the department's estimated costs of processing the
10 application under this chapter, but which shall not exceed
11 the following scale based upon the estimated cost of the
12 facility:

13 (i) 2% of any estimated cost up to \$1 million; plus

14 (ii) 1% of any estimated cost over \$1 million and up to
15 \$20 million; plus

16 (iii) 0.5% of any estimated cost over \$20 million and
17 up to \$100 million; plus

18 (iv) 0.25% of any amount of estimated cost over \$100
19 million and up to \$300 million; plus

20 (v) .125% of any amount of estimated cost over \$300
21 million; plus

22 (vi) .05% of any amount over \$1 billion.

23 (b) The department ~~may allow in its discretion~~ shall
24 ~~grant~~ a credit against the fee payable under this section
25 for the development of information or providing of services

1 required hereunder or required for preparation of an
2 environmental impact statement under the Montana or national
3 environmental policy acts. The applicant may submit the
4 information to the department together with an accounting of
5 the expenses incurred in preparing the information. The
6 department shall evaluate the applicability, validity, and
7 usefulness of the data and determine the amount which may be
8 credited against the filing fee payable under this section.
9 Upon 30 days' notice to the applicant, this credit may at
10 any time be reduced if the department ~~determines documents~~
11 to the applicant that it is necessary to carry out its
12 responsibilities under this chapter.

13 (2) (a) The department may contract with an applicant
14 for the development of information, provision of services
15 and payment of fees required under this chapter. The
16 contract may continue an agreement entered into pursuant to
17 75-20-106. Payments made to the department under such a
18 contract shall be credited against the fee payable
19 hereunder. Notwithstanding the provisions of this section,
20 the revenue derived from the filing fee must be sufficient
21 to enable the department, the department of health, the
22 board, the board of health, and the agencies listed in
23 75-20-216(5) to carry out their responsibilities under this
24 chapter. The department may amend a contract to require
25 additional payments for necessary expenses up to the limits

1 set forth in subsection (1)(a) above upon 30 days' notice to
2 the applicant. The department and applicant may enter into
3 a contract which exceeds the scale provided in subsection
4 (1)(a).

5 (b) If a contract is not entered into, the applicant
6 shall pay the filing fee in installments in accordance with
7 a schedule of installments developed by the department,
8 provided that no one installment may exceed 20% of the total
9 filing fee provided for in subsection (1).

10 (3) The estimated cost of upgrading an existing
11 transmission substation may not be included in the estimated
12 cost of a proposed facility for the purpose of calculating a
13 filing fee.

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

17 (5) The applicant is entitled to an accounting of
18 moneys expended and to a refund with interest at the rate of
19 6% a year of that portion of the filing fee not expended by
20 the department in carrying out its responsibilities under
21 this chapter. A refund shall be made after all
22 administrative and judicial remedies have been exhausted by
23 all parties to the certification proceedings.

24 (6) The revenues derived from filing fees shall be
25 used by the department in compiling the information required

1 for rendering a decision on a certificate and for carrying
2 out its and the board's other responsibilities under this
3 chapter."

4 Section 11. Section 75-20-216, MCA, is amended to
5 read:

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

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

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

18 (2) Upon receipt of an application complying with
19 75-20-211 through 75-20-215, and this section, the
20 department shall commence an intensive study and evaluation
21 of the proposed facility and its effects, considering all
22 applicable criteria listed in 75-20-301 and 75-20-503 and
23 the department of health shall commence a study to enable it
24 or the board of health to issue a decision, opinion, order,
25 certification, or permit as provided in subsection (3). The

department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health and the board of health shall within 1 year following the date of acceptance of an application ~~and the board of health or department of health~~ ~~if applicable within an additional 6 months~~ issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the ~~primary and reasonable alternate locations~~ location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the

determination required under 75-20-301(2) ~~(c)~~ (b). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board ~~and shall be utilized as part of their final site selection process.~~ Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within ~~22 months~~ 1 year following acceptance of an application for a facility as defined in ~~(a) and (d) of 75-20-104(10)(11) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length~~, the department shall make a report to the board which shall contain the department's studies, evaluations, ~~recommendations~~, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis, if any, prepared pursuant to the Montana Environmental Policy Act, ~~if any, if the~~

~~1 application is for a combination of two or more facilities;~~
~~2 the department shall make its report to the board within the~~
~~3 greater of the lengths of time provided for in this~~
~~4 subsection for either of the facilities;~~

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

15 Section 12. Section 75-20-217, MCA, is amended to
 16 read:

17 "75-20-217. Voiding an application. An application may
 18 be voided, following notice and an opportunity for a
 19 hearing, by the department for:

20 (1) any material and knowingly false statement in the
 21 application or in accompanying statements or studies
 22 required of the applicant;

23 (2) failure to file an application in substantially
 24 the form and content required by this chapter and the rules
 25 adopted thereunder; or

1 (3) failure to deposit the filing fee as provided in
 2 75-20-215."

3 Section 13. Section 75-20-218, MCA, is amended to
 4 read:

5 "75-20-218. Hearing date -- location -- department to
 6 act as staff -- hearings to be held jointly. (1) Upon
 7 receipt of the department's report submitted under
 8 75-20-216, the board shall set a date for a hearing to begin
 9 not more than 120 days after the receipt. Except for those
 10 hearings involving applications submitted for facilities as
 11 defined in (b) and (c) of 75-20-104~~(10)~~(11), certification
 12 hearings shall be conducted by the board in the county seat
 13 of Lewis and Clark County or the county in which the
 14 facility or the greater portion thereof is to be located.

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

20 (3) At the request of the applicant, the department of
 21 health and the board of health shall hold any required
 22 permit hearings required under laws administered by those
 23 agencies in conjunction with the board certification
 24 hearing. In such a conjunctive hearing the time periods
 25 established for reviewing an application and for issuing a

1 decision on certification of a proposed facility under this
2 chapter supersede the time periods specified in other laws
3 administered by the department of health and the board of
4 health."

5 Section 14. Section 75-20-219, MCA, is amended to
6 read:

7 "75-20-219. Amendments to a certificate. (1) Within 30
8 days after notice of an amendment to a certificate is given
9 as set forth in 75-20-213(1), including notice to all active
10 parties to the original proceeding, the department shall
11 determine whether the proposed change in the facility would
12 result in any material increase in any environmental impact
13 of the facility or a substantial change in the location of
14 ~~all or a portion of the facility other than as provided in~~
15 ~~the alternatives~~ as set forth in the original application. If
16 the department determines that the proposed change would
17 result in any material increase in any environmental impact
18 of the facility or a substantial change in the location of
19 all or a portion of the facility, the board shall hold a
20 hearing in the same manner as a hearing is held on an
21 application for a certificate. After hearing, the board
22 shall grant, deny, or modify the amendment with such
23 conditions as it deems appropriate.

24 (2) In those cases where the department determines
25 that the proposed change in the facility would not result in

1 any material increase in any environmental impact or would
2 not be a substantial change in the location ~~of all or a~~
3 ~~portion~~ of the facility, the board shall automatically grant
4 the amendment either as applied for or upon such terms or
5 conditions as the board considers appropriate unless the
6 department's determination is appealed to the board within
7 15 days after notice of the department's determination is
8 given.

9 (3) If the department or the board under subsection
10 (4) determines that a hearing is required because the
11 proposed change would result in any material increase in any
12 environmental impact of the facility or a substantial change
13 in the location ~~of all or a portion~~ of the facility, the
14 applicant has the burden of showing by clear and convincing
15 evidence that the amendment should be granted.

16 (4) If the department determines that the proposed
17 change in the facility would not result in any a material
18 increase in any environmental impact or would not be a
19 substantial change in the location ~~of all or a portion~~ of
20 the facility, and a hearing is required because the
21 department's determination is appealed to the board as
22 provided in subsection (2), the appellant has the burden of
23 showing by clear and convincing evidence that the proposed
24 change in the facility would result in any a material
25 increase in any environmental impact of the facility or a

substantial change in the location of ~~all or a portion~~ of the facility ~~other than as provided in the alternates set forth in the original application.~~

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health."

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

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

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been

filed with the board.

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

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

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

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

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the

1 time of their appearance. These witnesses are subject to
2 cross-examination.

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

15 (9) At the conclusion of the hearing, the hearing
16 examiner shall declare the hearing closed and shall, within
17 60 days of that date, prepare and submit to the board and in
18 the case of a conjunctive hearing, within 90 days to the
19 board and the board of health or department of health
20 proposed findings of fact, conclusions of law, and a
21 recommended decision.

22 (10) The hearing examiner appointed to conduct a
23 certification proceeding under this chapter shall insure
24 that the time of the proceeding, from the date the
25 department's report is filed with the board until the

1 recommended report and order of the examiner is filed with
2 the board, does not exceed 9 6 calendar months unless
3 extended by the board for good cause.

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

9 Section 16. Section 75-20-222, MCA, is amended to
10 read:

11 "75-20-222. Record of hearing -- procedure -- rules of
12 evidence -- burden of proof. (1) Any studies,
13 investigations, reports, or other documentary evidence,
14 including those prepared by the department, which any party
15 wishes the board to consider or which the board itself
16 expects to utilize or rely upon shall be made a part of the
17 record.

18 (2) A record shall be made of the hearing and of all
19 testimony taken.

20 (3) In a certification proceeding held under this
21 chapter, the applicant has the burden of showing by clear
22 and convincing evidence that the application should be
23 granted and that the criteria of 75-20-301 are met.

24 (4) All proceedings under this chapter are governed by
25 the procedures set forth in this chapter, the procedural

rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter ~~or the procedural rules adopted by the board.~~"

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

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

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

(a) the basis of the need for the facility, if a utility facility;

(b) the nature of the probable environmental impact;

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

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

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

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

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

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

(f) that the location of the facility as proposed conforms to applicable state ~~and local~~ laws and regulations issued thereunder ~~except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected 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) for facilities described in 75-20-104(1)(b), that
7 the use of public lands for location of the facility was
8 evaluated and public lands were selected whenever their use
9 is as economically practicable as the use of private lands
10 and compatible with the environmental criteria listed in
11 75-20-503.

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

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

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

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

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

23 ~~†--any other factors that it considers relevant~~

24 (4) Considerations of need, public need, or public
25 convenience and necessity and demonstration thereof by the

1 applicant shall apply only to utility facilities."

2 Section 18. Section 75-20-303, MCA, is amended to
3 read:

4 "75-20-303. Opinion issued with decision — contents.

5 (1) In rendering a decision on an application for a
6 certificate, the board shall issue an opinion stating its
7 reasons for the action taken.

8 ~~†2†--if the board has found that any regional or local~~
9 ~~law or regulation which would be otherwise applicable is~~
10 ~~unreasonably restrictive pursuant to 75-20-301†2†††† it~~
11 ~~shall state in its opinion the reasons therefor~~

12 ~~†3†(2)~~ Any certificate issued by the board shall
13 include the following:

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

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

18 (ii) any adverse environmental effects which cannot be
19 avoided by issuance of the certificate;

20 (iii) problems and objections raised by other federal
21 and state agencies and interested groups;

22 ~~†iv†--alternatives to the proposed facility†~~

23 ~~†v†(iv)~~ a plan for monitoring environmental effects of
24 the proposed facility; and

25 ~~†vi†(v)~~ a time limit as provided in subsection ~~†4†~~

1 (3), during which construction of the facility must be
2 completed;

3 (b) a statement signed by the applicant showing
4 agreement to comply with the requirements of this chapter
5 and the conditions of the certificate.

6 ~~(4)~~(3) The board shall issue as part of the
7 certificate the following time limits during which
8 construction of a facility must be completed:

9 (a) For a facility as defined in (b) ~~or (c)~~ of
10 75-20-104~~(7)~~(11) that is more than 30 miles in length, the
11 time limit is 10 years.

12 (b) For a facility as defined in (b) ~~or (c)~~ of
13 75-20-104~~(7)~~(11) that is 30 miles or less in length, the
14 time limit is 5 years.

15 (c) The time limit shall be extended for periods of 2
16 years each upon a showing by the applicant to the board that
17 a good faith effort is being undertaken to complete
18 construction. Under this subsection, a good faith effort to
19 complete construction includes the process of acquiring any
20 necessary state or federal permit or certificate for the
21 facility and the process of judicial review of any such
22 permit or certificate.

23 ~~(5)~~(4) The provisions of subsection ~~(4)~~ (3) apply to
24 any facility for which a certificate has not been issued or
25 for which construction is yet to be commenced."

1 Section 19. Section 75-20-304, MCA, is amended to
2 read:

3 "75-20-304. Waiver of provisions of certification
4 proceedings. (1) The board may waive compliance with any of
5 the provisions of 75-20-216 through 75-20-222, 75-20-501,
6 and this part if the applicant makes a clear and convincing
7 showing to the board at a public hearing that an immediate,
8 urgent need for a facility exists and that the applicant did
9 not have knowledge that the need for the facility existed
10 sufficiently in advance to fully comply with the provisions
11 of 75-20-216 through 75-20-222, 75-20-501, and this part.

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

22 ~~(3) The board shall waive compliance with the~~
23 ~~requirements of subsections (2)(c), (3)(b), and (3)(c) of~~
24 ~~75-20-301 and 75-20-501(5) and the requirements of~~
25 ~~subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),~~

1 and ~~75-20-303(3)(a)(iv)~~ relating to consideration of
2 alternative sites if the applicant makes a clear and
3 convincing showing to the board at a public hearing that:

4 (a) a proposed facility will be constructed in a
5 county where a single employer within the county has
6 permanently curtailed or ceased operations causing a loss of
7 250 or more permanent jobs within 2 years at the employer's
8 operations within the preceding 10-year period;

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

12 (c) the proposed facility will be constructed within a
13 15-mile radius of the operations that have ceased or been
14 curtailed; and

15 (d) the proposed facility will have a beneficial
16 effect on the economy of the county in which the facility is
17 proposed to be located;

18 (4) the waiver provided for in subsection (3) applies
19 only to permanent job losses by a single employer; the
20 waiver provided for in subsection (3) does not apply to jobs
21 of a temporary or seasonal nature, including but not limited
22 to construction jobs or job losses during labor disputes;

23 (5) the waiver provided for in subsection (3) does not
24 apply to consideration of alternatives or minimum adverse
25 environmental impact for a facility defined in subsections

1 (10)(b), (c), (d) or (e) of 75-20-104 for an associated
2 facility defined in subsection (3) of 75-20-104 or for any
3 portion of or process in a facility defined in subsection
4 (10)(e) of 75-20-104 to the extent that the process or
5 portion of the facility is not subject to a permit issued by
6 the department of health or board of health;

7 (6) the applicant shall pay all expenses required to
8 process and conduct a hearing on a waiver request under
9 subsection (3); however, any payments made under this
10 subsection shall be credited toward the fee paid under
11 75-20-215 to the extent the data or evidence presented at
12 the hearing or the decision of the board under subsection
13 (3) can be used in making a certification decision under
14 this chapter;

15 (7) the board may grant only one waiver under
16 subsections (3) and (4) for each permanent loss of jobs as
17 defined in subsection (3)(a)."

18 Section 20. Section 75-20-402, MCA, is amended to
19 read:

20 "75-20-402. Monitoring. The board, the department, the
21 department of health, and the board of health shall monitor
22 the operations of all certificated facilities for assuring
23 continuing compliance with this chapter and certificates
24 issued hereunder and for discovering and preventing
25 noncompliance with this chapter and the certificates. The

applicant shall pay all expenses related to the monitoring plan established in subsection ~~(3)~~ ~~(2)(a)(iv)~~ ~~(iv)~~ of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes."

Section 21. Section 75-20-403, MCA, is amended to read:

"75-20-403. Revocation or suspension of certificate.

A certificate may be revoked or suspended by the board following notice and opportunity for a hearing:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure ~~to maintain--safety--standards--or~~ to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department."

Section 22. Section 75-20-405, MCA, is amended to read:

"75-20-405. Action to recover damages to water supply.

An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other ~~legitimate~~ beneficial use from a

surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state."

Section 23. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter -- civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than \$10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the

1 district court of the first judicial district of Montana.

2 (2) Whoever knowingly and willfully violates
3 subsection (1) shall be fined not more than \$10,000 for each
4 violation or imprisoned for not more than 1 year, or both.
5 Each day of a continuing violation constitutes a separate
6 offense.

7 (3) In addition to any penalty provided in ~~subsections~~
8 ~~subsection~~ (1) or (2), whenever the department determines
9 that a person is violating ~~or is about to violate~~ any of the
10 provisions of this section, it may refer the matter to the
11 attorney general who may bring a civil action on behalf of
12 the state in the district court of the first judicial
13 district of Montana for injunctive or other appropriate
14 relief against the violation and to enforce this chapter or
15 a certificate issued hereunder. Upon a proper showing, a
16 permanent or preliminary injunction or temporary restraining
17 order shall be granted without bond.

18 (4) The department shall also enforce this chapter and
19 bring legal actions to accomplish the enforcement through
20 its own legal counsel.

21 (5) All fines and penalties collected shall be
22 deposited in the ~~earmarked-revenue-fund-for-the-use-of-the~~
23 ~~department--in--administering--this--chapter~~ state general
24 fund."

25 Section 24. Section 75-20-501, MCA, is amended to

1 read:

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

8 (2) The plan shall be submitted by April 1 of each
9 year and must include the following:

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

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

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

25 (d) projections of the demand for the service rendered

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

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

9 (3) The plan shall be furnished to the governing body
 10 of each county in which any facility included in the plan
 11 under (2)(a) of this section is proposed to be located and
 12 made available to the public by the department. The ~~utility~~
 13 ~~or person~~ shall give public notice throughout the state of
 14 its plan by filing the plan with the environmental quality
 15 council, the department of health and environmental
 16 sciences, the department of highways, the department of
 17 public service regulation, the department of state lands,
 18 the department of fish, wildlife, and parks, and the
 19 department of commerce. ~~Citizen-environmental-protection-and~~
 20 ~~resource--planning--groups--and--other--interested~~ Interested
 21 persons may obtain a plan by written request and payment
 22 therefor to the department.

23 (4) A rural electric cooperative may furnish the
 24 department with a copy of the long-range plan and 2-year
 25 work plan required to be completed under federal rural

1 electrification requirements in lieu of the long-range plan
 2 required in subsection (1).

3 (5) No person may file an application for a facility
 4 unless the facility had been adequately identified in a
 5 long-range plan at least 2 years prior to acceptance of an
 6 application by the department."

7 Section 25. Section 75-20-502, MCA, is amended to
 8 read:

9 "75-20-502. Study of included facilities. If a ~~utility~~
 10 ~~or person~~ lists and identifies a proposed facility in its
 11 plan, submitted pursuant to 75-20-501, as one on which
 12 construction is proposed to be commenced within the 5-year
 13 period following submission of the plan, the department
 14 shall commence examination and evaluation of the proposed
 15 site to determine whether construction of the proposed
 16 facility would unduly impair the environmental values in
 17 75-20-503. This study may be continued until such time as a
 18 person files an application for a certificate under
 19 75-20-211. Information gathered under this section may be
 20 used to support findings and recommendations required for
 21 issuance of a certificate."

22 Section 26. Section 75-20-503, MCA, is amended to
 23 read:

24 "75-20-503. Environmental factors evaluated. In
 25 evaluating long-range plans, conducting 5-year site reviews,

and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, ~~and may by rule add to the categories of this section:~~

(1) energy needs ~~requirements:~~

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

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

~~(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;~~

~~(d) promotional activities of the utility which may have given rise to the need for this facility;~~

~~(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;~~

~~(f) conservation activities which could reduce the need for more energy;~~

~~(g) research activities of the utility of new technology available to it which might minimize environmental impacts;~~

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby

land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

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

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat

1 from facilities;

2 (s) for facilities described in 75-20-104(1)(b);

3 opportunities for using public lands for location of

4 facilities whenever as economically practicable as the use

5 of private lands and compatible with the requirements of

6 this section;

7 (3) water resources impacts:

8 (a) hydrologic studies of adequacy of water supply and

9 impact of facility on streamflow, lakes, and reservoirs;

10 (b) hydrologic studies of impact of facilities on

11 groundwater;

12 (c) cooling system evaluation, including consideration

13 of alternatives;

14 (d) inventory of effluents, including physical,

15 chemical, biological, and radiological characteristics;

16 (e) hydrologic studies of effects of effluents on

17 receiving waters, including mixing characteristics of

18 receiving waters, changed evaporation due to temperature

19 differentials, and effect of discharge on bottom sediments;

20 (f) relationship to water quality standards;

21 (g) effects of changes in quantity and quality on

22 water use by others, including both withdrawal and in situ

23 uses;

24 (h) relationship to projected uses;

25 (i) relationship to water rights;

1 (j) effects on plant and animal life, including algae,

2 macroinvertebrates, and fish population;

3 (k) effects on unique or otherwise significant

4 ecosystems, e.g., wetlands;

5 (l) monitoring programs;

6 (4) air quality impacts:

7 (a) meteorology--wind direction and velocity, ambient

8 temperature ranges, precipitation values, inversion

9 occurrence, other effects on dispersion;

10 (b) topography--factors affecting dispersion;

11 (c) standards in effect and projected for emissions;

12 (d) design capability to meet standards;

13 (e) emissions and controls:

14 (i) stack design;

15 (ii) particulates;

16 (iii) sulfur oxides;

17 (iv) oxides of nitrogen; and

18 (v) heavy metals, trace elements, radioactive

19 materials, and ~~other~~ toxic substances;

20 (f) relationship to present and projected air quality

21 of the area;

22 (g) monitoring program;

23 (5) solid wastes impacts:

24 (a) solid waste inventory;

25 (b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring--adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing ~~and potential stricter~~ noise level standards;

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

Section 27. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of;

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "Nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility" as defined in 75-20-104(7) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section."

Section 28. Section 75-20-1205, MCA, is amended to read:

"75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of ~~subsections--(2)--and--(3)--of~~ 75-20-304(2), the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility."

NEW SECTION. Section 29. Effective date. This act is effective on passage and approval.

-End-

Approved by Committee
on Natural Resources

SENATE BILL NO. 275

INTRODUCED BY KEATING, PAVLOVICH, SHAW, TVEIT,

ABRAMS, SWITZER, DEVLIN, HANSON, KOLSTAD

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; REDEFINING UTILITY; SPECIFYING THAT A CERTIFICATE OF PUBLIC NEED IS NOT REQUIRED FOR A NONUTILITY FACILITY; DELETING THE REQUIREMENT FOR ALTERNATE SITE STUDIES AND ALTERNATE ENERGY STUDIES; REDUCING TIMES ALLOWED FOR EVALUATION OF STUDIES; SPECIFYING HOW FEES PAID ARE TO BE USED; DIRECTING FINES AND PENALTIES TO BE PAID TO THE GENERAL FUND; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-105, 75-20-112, 75-20-201, 75-20-211 THROUGH 75-20-220, 75-20-222, 75-20-301, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-408, 75-20-501 THROUGH 75-20-503, 75-20-1202, AND 75-20-1205; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent

unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

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

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

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

1 the rules adopted hereunder.

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

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

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

13 (6) "Certificate" means the certificate of
14 environmental compatibility ~~or, in the case of a utility, a~~
15 ~~certificate of environmental compatibility~~ and public need
16 issued by the board under this chapter that is required for
17 the construction or operation of a facility.

18 (7) "Commence to construct" means:

19 (a) any clearing of land, excavation, construction, or
20 other action that would affect the environment of the site
21 or route of a facility but does not mean changes needed for
22 temporary use of sites or routes for nonutility purposes or
23 uses in securing geological data, including necessary
24 borings to ascertain foundation conditions;

25 (b) the fracturing of underground formations by any

1 means if such activity is related to the possible future
2 development of a gasification facility or a facility
3 employing geothermal resources but does not include the
4 gathering of geological data by boring of test holes or
5 other underground exploration, investigation, or
6 experimentation;

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

10 (d) the relocation or upgrading of an existing
11 facility defined by (b) or (c) of subsection ~~(10)~~ (11),
12 including upgrading to a design capacity covered by
13 subsection ~~(10)(11)(b)~~, except that the term does not
14 include normal maintenance or repair of an existing
15 facility.

16 ~~(8) "Cost" means the estimated cost in dollars at the~~
17 ~~time of proposed construction of THE ACCEPTANCE OF THE~~
18 ~~APPLICATION UNDER 75-20-216(A) FOR a facility or associated~~
19 ~~facility located in Montana.~~

20 ~~(9)(12) "Department" means the department of natural~~
21 ~~resources and conservation provided for in Title 2, chapter~~
22 ~~15, part 33.~~

23 ~~(9)(10) "Department of health" means the department of~~
24 ~~health and environmental sciences provided for in Title 2,~~
25 ~~chapter 15, part 21.~~

1 ~~(10)~~(11) "Facility" means:

2 (a) except for crude oil and natural gas refineries,
3 and facilities and associated facilities designed for or
4 capable of producing, gathering, processing, transmitting,
5 transporting, or distributing crude oil or natural gas, and
6 those facilities subject to The Montana Strip and
7 Underground Mine Reclamation Act, each plant, unit, or other
8 facility and associated facilities designed for or capable
9 of:

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

15 (ii) producing 25 million cubic feet or more of
16 ~~pipeline-quality~~ gas derived from coal per day or any
17 addition thereto ~~having-an-estimated-cost-in-excess-of-\$10~~
18 ~~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-\$10-million;~~

22 (iv) enriching uranium minerals or any addition thereto
23 ~~having-an-estimated-cost-in-excess-of-\$10-million;~~ or

24 (v) utilizing or converting 500,000 tons of coal per
25 year or more or any addition thereto ~~having-an-estimated~~

1 ~~cost-in-excess-of-\$10-million;~~

2 (b) each electric transmission line and associated
3 facilities of a design capacity of more than 69 115
4 kilovolts, ~~except that the term does not include an electric~~
5 ~~transmission line and associated facilities of a design~~
6 ~~capacity of 230 kilovolts or less and more than 10 miles or~~
7 ~~less in length;~~

8 (c) each pipeline and associated facilities designed
9 for or capable of transporting gas (except for natural gas),
10 water, or liquid hydrocarbon products from or to a facility
11 located within or without this state of the size indicated
12 in subsection ~~(10)~~(11)(a) of this section;

13 (d) any use of geothermal resources, including the use
14 of underground space in existence or to be created, for the
15 creation, use, or conversion of energy, designed for or
16 capable of producing geothermally derived power equivalent
17 to 25 million Btu per hour or more or any addition thereto
18 ~~having-an-estimated-cost-in-excess-of-\$750,000;~~

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

20 ~~(11)~~(12) "Person" means any individual, group, firm,
21 partnership, corporation, cooperative, association,
22 government subdivision, government agency, local government,
23 or other organization or entity.

24 ~~(12)~~(13) "Transmission substation" means any structure,
25 device, or equipment assemblage, commonly located and

1 designed for voltage regulation, circuit protection, or
2 switching necessary for the construction or operation of a
3 proposed transmission line.

4 ~~{13}{14}~~ "Utility" means any--person--engaged--in--any
5 aspect--of--the--production--storage--sale--delivery--or
6 furnishing-of-heat-electricity-gas-hydrocarbon-products
7 or--energy--in--any--form--for--ultimate-public-use a person
8 furnishing energy within Montana and subject to rate of
9 return or rate regulation by a state or federal regulatory
10 body or protected from competition through a guaranteed
11 monopoly of service in a given service area."

12 Section 3. Section 75-20-105, MCA, is amended to read:

13 "75-20-105. Adoption of rules. The board may adopt
14 rules implementing the provisions of this chapter--including
15 but-not-limited-to:

16 ~~{1}~~--rules--governing--the--form--and--content--of
17 applications;

18 ~~{2}~~--rules--further--defining--the--terms--used--in--this
19 chapter;

20 ~~{3}~~--rules--governing--the--form--and--content--of--long-range
21 plans;

22 ~~{4}~~--any--other--rules--the--board--considers--necessary--to
23 accomplish-the-purposes-and-objectives-of-this-chapter."

24 Section 4. Section 75-20-112, MCA, is amended to read:

25 "75-20-112. Moneys to earmarked revenue fund. All

1 fees--taxes--fines--and--penalties collected under this
2 chapter shall be deposited in the earmarked revenue fund for
3 use by the department in carrying out its functions and
4 responsibilities under this chapter."

5 Section 5. Section 75-20-201, MCA, is amended to read:

6 "75-20-201. Certificate required -- operation in
7 conformance -- approval by popular vote of certificate for
8 nuclear facility. (1) A person may not commence to construct
9 a facility in the state without first applying for and
10 obtaining a certificate of--environmental--compatibility--and
11 public-need issued with respect to the facility by the
12 board.

13 (2) A facility with respect to which a certificate is
14 issued may not thereafter be constructed, operated, or
15 maintained except in conformity with the certificate and any
16 terms, conditions, and modifications contained therein.

17 (3) A certificate may only be issued pursuant to this
18 chapter.

19 (4) If the board decides to issue a certificate for a
20 nuclear facility, it shall report such recommendation to the
21 applicant and may not issue the certificate until such
22 recommendation is approved by a majority of the voters in a
23 statewide election called by initiative or referendum
24 according to the laws of this state."

25 Section 6. Section 75-20-211, MCA, is amended to read:

1 "75-20-211. Application -- filing and contents --
2 proof of service and notice. (1) (a) An applicant shall file
3 with the department and department of health a joint
4 application for a certificate under this chapter and for the
5 permits required under the laws administered by the
6 department of health and the board of health in such form as
7 the board requires under applicable rules, containing the
8 following information:

9 (i) a description of the location and of the facility
10 to be built thereon;

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

13 ~~+++a statement explaining the need for the facility;~~

14 ~~++++A STATEMENT EXPLAINING THE NEED FOR THE FACILITY.~~
15 ~~IE_A_UTILITY;~~

16 ~~++++(IV) for _____ facilities _____ described _____ in~~
17 ~~75-20-104(11)(b1)~~ a description of reasonable alternate
18 locations for the proposed facility; a general description
19 of the comparative merits and detriments of each location
20 submitted, and a statement of the reasons why the primary
21 proposed location is best suited for the facility;

22 ~~+++(V) baseline data for the primary---and~~
23 ~~reasonable-alternate-locations location;~~

24 ~~+++(VI) at the applicant's option, an environmental~~
25 study plan to satisfy the requirements of this chapter; and

1 ~~+++(VIII) such other relevant information as the~~
2 applicant ~~considers-relevant submits~~ or as the board and
3 board of health by order or rule or the department and
4 department of health by order or rule may require.

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

9 (2) An application may consist of an application for
10 two or more facilities in combination which are physically
11 and directly attached to each other and are operationally a
12 single operating entity.

13 (3) An application shall be accompanied by proof of
14 service of a copy of the application on the chief executive
15 officer of each unit of local government, county
16 commissioner, city or county planning boards, and federal
17 agencies charged with the duty of protecting the environment
18 or of planning land use in the area in which any portion of
19 the proposed facility may be located, ~~both-as-primary-and~~
20 ~~as--alternatively--proposed~~ and on the following state
21 government agencies:

- 22 (a) environmental quality council;
- 23 (b) department of public service regulation;
- 24 (c) department of fish, wildlife, and parks;
- 25 (d) department of state lands;

(e) department of commerce;

(f) department of highways;

(g) department of revenue.

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

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

Section 7. Section 75-20-212, MCA, is amended to read:

"75-20-212. Cure for failure of service. ~~Inadvertent failure~~ ~~Failure~~ of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

Section 8. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as

set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines ~~documents to the applicant as necessary, or the department may require a new application and filing fee.~~

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive."

Section 9. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104~~(10)~~~~(11)~~ at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its

1 preferred location, ~~a description of reasonable alternative~~
 2 ~~locations~~ and such available and relevant information as
 3 the board by rule or department by order requires. An
 4 applicant complying with this section is entitled to a 5%
 5 reduction of the filing fee required under 75-20-215."

6 Section 10. Section 75-20-215, MCA, is amended to
 7 read:

8 "75-20-215. Filing fee -- accountability -- refund --
 9 use. (1) (a) A filing fee shall be deposited in the
 10 earmarked revenue fund for the use of the department in
 11 administering this chapter. The applicant shall pay to the
 12 department a filing fee as provided in this section based
 13 upon the department's estimated costs of processing the
 14 application under this chapter, but which shall not exceed
 15 the following scale based upon the estimated cost of the
 16 facility:

17 (i) 2% of any estimated cost up to \$1 million; plus

18 (ii) 1% of any estimated cost over \$1 million and up to
 19 \$20 million; plus

20 (iii) 0.5% of any estimated cost over \$20 million and
 21 up to \$100 million; plus

22 (iv) 0.25% of any amount of estimated cost over \$100
 23 million and up to \$300 million; plus

24 (v) .125% of any amount of estimated cost over \$300
 25 million UP TO \$1 BILLION; plus

1 (vii) .05% of any amount over \$1 billion.

2 (b) The department ~~may allow in its discretion shall~~
 3 grant a credit against the fee payable under this section
 4 for the development of information or providing of services
 5 required hereunder or required for preparation of an
 6 environmental impact statement under the Montana or national
 7 environmental policy acts. The applicant may submit the
 8 information to the department together with an accounting of
 9 the expenses incurred in preparing the information. The
 10 department shall evaluate the applicability, validity, and
 11 usefulness of the data and determine the amount which may be
 12 credited against the filing fee payable under this section.
 13 Upon 30 days' notice to the applicant, this credit may at
 14 any time be reduced if the department determines documents
 15 to the applicant that it is necessary to carry out its
 16 responsibilities under this chapter.

17 (2) (a) The department may contract with an applicant
 18 for the development of information, provision of services
 19 and payment of fees required under this chapter. The
 20 contract may continue an agreement entered into pursuant to
 21 75-20-106. Payments made to the department under such a
 22 contract shall be credited against the fee payable
 23 hereunder. Notwithstanding the provisions of this section,
 24 the revenue derived from the filing fee must be sufficient
 25 to enable the department, the department of health, the

board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

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

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all

administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 11. Section 75-20-216, MCA, is amended to read:

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

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

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

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all

1 applicable criteria listed in 75-20-301 and 75-20-503 and
 2 the department of health shall commence a study to enable it
 3 or the board of health to issue a decision, opinion, order,
 4 certification, or permit as provided in subsection (3). The
 5 department and department of health shall use, to the extent
 6 they consider applicable, valid and useful existing studies
 7 and reports submitted by the applicant or compiled by a
 8 state or federal agency.

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

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

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

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

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

19 Section 12. Section 75-20-217, MCA, is amended to
 20 read:

21 "75-20-217. Voiding an application. An application may
 22 be voided, following notice and an opportunity for a
 23 hearing, by the department for:

24 (1) any material and knowingly false statement in the
 25 application or in accompanying statements or studies

1 required of the applicant;

2 (2) failure to file an application in substantially
 3 the form and content required by this chapter and the rules
 4 adopted thereunder; or

5 (3) failure to deposit the filing fee as provided in
 6 75-20-215."

7 Section 13. Section 75-20-218, MCA, is amended to
 8 read:

9 "75-20-218. Hearing date -- location -- department to
 10 act as staff -- hearings to be held jointly. (1) Upon
 11 receipt of the department's report submitted under
 12 75-20-216, the board shall set a date for a hearing to begin
 13 not more than 120 days after the receipt. Except for those
 14 hearings involving applications submitted for facilities as
 15 defined in (b) and (c) of 75-20-104~~(18)~~(11), certification
 16 hearings shall be conducted by the board in the county seat
 17 of Lewis and Clark County or the county in which the
 18 facility or the greater portion thereof is to be located.

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

24 (3) At the request of the applicant, the department of
 25 health and the board of health shall hold any required

1 permit hearings required under laws administered by those
2 agencies in conjunction with the board certification
3 hearing. In such a conjunctive hearing the time periods
4 established for reviewing an application and for issuing a
5 decision on certification of a proposed facility under this
6 chapter supersede the time periods specified in other laws
7 administered by the department of health and the board of
8 health."

9 Section 14. Section 75-20-219, MCA, is amended to
10 read:

11 "75-20-219. Amendments to a certificate. (1) Within 30
12 days after notice of an amendment to a certificate is given
13 as set forth in 75-20-213(1), including notice to all active
14 parties to the original proceeding, the department shall
15 determine whether the proposed change in the facility would
16 result in any material increase in any environmental impact
17 of the facility or a substantial change in the location of
18 ~~all--or--a-portion-of-the-facility-other-than-as-provided-in~~
19 ~~the-alternates~~ as set forth in the original application. If
20 the department determines that the proposed change would
21 result in any material increase in any environmental impact
22 of the facility or a substantial change in the location of
23 ~~all-or-a-portion-of~~ the facility, the board shall hold a
24 hearing in the same manner as a hearing is held on an
25 application for a certificate. After hearing, the board

1 shall grant, deny, or modify the amendment with such
2 conditions as it deems appropriate.

3 (2) In those cases where the department determines
4 that the proposed change in the facility would not result in
5 any material increase in any environmental impact or would
6 not be a substantial change in the location ~~of--all--or--a~~
7 ~~portion~~ of the facility, the board shall automatically grant
8 the amendment either as applied for or upon such terms or
9 conditions as the board considers appropriate unless the
10 department's determination is appealed to the board within
11 15 days after notice of the department's determination is
12 given.

13 (3) If the department or the board under subsection
14 (4) determines that a hearing is required because the
15 proposed change would result in any material increase in any
16 environmental impact of the facility or a substantial change
17 in the location ~~of--all--or--a-portion~~ of the facility, the
18 applicant has the burden of showing by clear and convincing
19 evidence that the amendment should be granted.

20 (4) If the department determines that the proposed
21 change in the facility would not result in any a material
22 increase in any environmental impact or would not be a
23 substantial change in the location ~~of--all--or--a-portion~~ of
24 the facility, and a hearing is required because the
25 department's determination is appealed to the board as

1 provided in subsection (2), the appellant has the burden of
 2 showing by clear and convincing evidence that the proposed
 3 change in the facility would result in any a material
 4 increase in any environmental impact of the facility or a
 5 substantial change in the location of-all-or-a-portion of
 6 the facility other-than-as-provided-in-the--alternates--set
 7 forth-in-the-originat-application.

8 (5) If an amendment is required to a certificate which
 9 would affect, amend, alter or modify a decision, opinion,
 10 order, certification, or permit issued by the department of
 11 health or board of health, such amendment must be processed
 12 under the applicable statutes administered by the department
 13 of health or board of health."

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

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

1 department of health shall mutually agree on the appointment
 2 of a hearing examiner to preside at both hearings.

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

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

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

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

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

1 hearing examiner shall prescribe.

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

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

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

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

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

13 Section 16. Section 75-20-222, MCA, is amended to
14 read:

15 "75-20-222. Record of hearing -- procedure -- rules of
16 evidence -- burden of proof. (1) Any studies,
17 investigations, reports, or other documentary evidence,
18 including those prepared by the department, which any party
19 wishes the board to consider or which the board itself
20 expects to utilize or rely upon shall be made a part of the
21 record.

22 (2) A record shall be made of the hearing and of all
23 testimony taken.

24 (3) In a certification proceeding held under this
25 chapter, the applicant has the burden of showing by clear

1 and convincing evidence that the application should be
2 granted and that the criteria of 75-20-301 are met.

3 (4) All proceedings under this chapter are governed by
4 the procedures set forth in this chapter, the procedural
5 rules adopted by the board, and the Montana Rules of
6 Evidence unless one or more rules of evidence are waived by
7 the hearing examiner upon a showing of good cause by one or
8 more of the parties to the hearing. No other rules of
9 procedure or evidence shall apply except that the contested
10 case procedures of the Montana Administrative Procedure Act
11 shall apply if not in conflict with the procedures set forth
12 in this chapter ~~or the procedural rules adopted by the~~
13 ~~board.~~"

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

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

25 (2) The board may not grant a certificate either as

1 proposed by the applicant or as modified by the board unless
2 it shall find and determine:

3 (a) the basis of the need for the facility, ~~if a~~
4 ~~utility facility;~~

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

6 (c) that the facility represents the minimum adverse
7 environmental impact, considering the state of available
8 technology ~~and the nature and economies of the various~~
9 ~~alternatives;~~

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

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

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

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

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

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

~~restrictive--in--view-of-the-existing-technology--of-factors
of-cost-or-economics--or-of-the-needs-of-consumers--whether
located---inside---or---outside--of--the--directly--affected
government-subdivisions;~~

(g) that the facility will serve the public interest,
~~convenience--and--necessity;~~

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

~~(i) for facilities described in 75-20-104(1)(b),~~ that
the use of public lands for location of the facility was
evaluated and public lands were selected whenever their use
is as economically practicable as the use of private lands
and compatible with the environmental criteria listed in
75-20-503.

(3) In determining that the facility, ~~IE A UTILITY,~~
will serve the public interest, ~~convenience--and--necessity~~
under subsection (2)(g) of this section, the board shall
consider:

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

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

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

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

~~(e)--any-other-factors-that-it-considers-relevant;~~

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

Section 18. Section 75-20-303, MCA, is amended to
read:

"75-20-303. Opinion issued with decision -- contents.

(1) In rendering a decision on an application for a
certificate, the board shall issue an opinion stating its
reasons for the action taken.

~~(2)--if--the-board-has-found-that-any-region--or--local
law-or-regulation-which-would--be--otherwise--applicable--is
unreasonably--restrictive--pursuant--to--75-20-301(2)(f)--it
shall--state--in--its--opinion--the--reasons--therefor~~

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

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

(i) the environmental impact of the proposed facility;

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

(iii) problems and objections raised by other federal

1 and state agencies and interested groups;
 2 ~~(iv)-alternatives-to-the-proposed-facility;~~
 3 ~~(v)(ix)~~ a plan for monitoring environmental effects of
 4 the proposed facility; and
 5 ~~(vi)(x)~~ a time limit as provided in subsection ~~(4)~~
 6 ~~(3)~~, during which construction of the facility must be
 7 completed;
 8 (b) a statement signed by the applicant showing
 9 agreement to comply with the requirements of this chapter
 10 and the conditions of the certificate.
 11 ~~(4)(3)~~ The board shall issue as part of the
 12 certificate the following time limits during which
 13 construction of a facility must be completed:
 14 (a) For a facility as defined in (b) or ~~(c)~~ of
 15 75-20-104~~(7)(11)~~ that is more than 30 miles in length, the
 16 time limit is 10 years.
 17 (b) For a facility as defined in (b) or ~~(c)~~ of
 18 75-20-104~~(7)(11)~~ that is 30 miles or less in length, the
 19 time limit is 5 years.
 20 (c) The time limit shall be extended for periods of 2
 21 years each upon a showing by the applicant to the board that
 22 a good faith effort is being undertaken to complete
 23 construction. Under this subsection, a good faith effort to
 24 complete construction includes the process of acquiring any
 25 necessary state or federal permit or certificate for the

1 facility and the process of judicial review of any such
 2 permit or certificate.
 3 ~~(5)(4)~~ The provisions of subsection ~~(4)~~ ~~(3)~~ apply to
 4 any facility for which a certificate has not been issued or
 5 for which construction is yet to be commenced."
 6 Section 19. Section 75-20-304, MCA, is amended to
 7 read:
 8 "75-20-304. Waiver of provisions of certification
 9 proceedings. (1) The board may waive compliance with any of
 10 the provisions of 75-20-216 through 75-20-222, 75-20-501,
 11 and this part if the applicant makes a clear and convincing
 12 showing to the board at a public hearing that an immediate,
 13 urgent need for a facility exists and that the applicant did
 14 not have knowledge that the need for the facility existed
 15 sufficiently in advance to fully comply with the provisions
 16 of 75-20-216 through 75-20-222, 75-20-501, and this part.
 17 (2) The board may waive compliance with any of the
 18 provisions of this chapter upon receipt of notice by a
 19 ~~utility-or-person~~ persons subject to this chapter that a
 20 facility or associated facility has been damaged or
 21 destroyed as a result of fire, flood, or other natural
 22 disaster or as the result of insurrection, war, or other
 23 civil disorder and there exists an immediate need for
 24 construction of a new facility or associated facility or the
 25 relocation of a previously existing facility or associated

1 facility in order to promote the public welfare.

2 {3}--The board shall waive compliance with the

3 requirements of subsections (2)(c) and (3)(b) of

4 75-20-301 and 75-20-501(5) and the requirements of

5 subsections (i)(a)(iv) and (v) of 75-20-211, 75-20-216(3),

6 and 75-20-303(3)(a)(iv) relating to consideration of

7 alternative sites if the applicant makes a clear and

8 convincing showing to the board at a public hearing that:

9 (a) a proposed facility will be constructed in a

10 county where a single employer within the county has

11 permanently curtailed or ceased operations causing a loss of

12 250 or more permanent jobs within 2 years at the employer's

13 operations within the preceding 10-year period;

14 (b) the county and municipal governing bodies in whose

15 jurisdiction the facility is proposed to be located support

16 by resolution such a waiver;

17 (c) the proposed facility will be constructed within a

18 15-mile radius of the operations that have ceased or been

19 curtailed; and

20 (d) the proposed facility will have a beneficial

21 effect on the economy of the county in which the facility is

22 proposed to be located;

23 (4) The waiver provided for in subsection (3) applies

24 only to permanent job losses by a single employer. The

25 waiver provided for in subsection (3) does not apply to jobs

1 of a temporary or seasonal nature including but not limited

2 to construction jobs or job losses during labor disputes;

3 (5) The waiver provided for in subsection (3) does not

4 apply to consideration of alternatives or minimum adverse

5 environmental impact for a facility defined in subsections

6 (10)(b)(v)(c)(d) or (e) of 75-20-104 or for an associated

7 facility defined in subsection (3) of 75-20-104 or for any

8 portion of or process in a facility defined in subsection

9 (10)(a) of 75-20-104 to the extent that the process or

10 portion of the facility is not subject to a permit issued by

11 the department of health or board of health;

12 (6) The applicant shall pay all expenses required to

13 process and conduct a hearing on a waiver request under

14 subsection (3). However, any payments made under this

15 subsection shall be credited toward the fee paid under

16 75-20-215 to the extent the data or evidence presented at

17 the hearing or the decision of the board under subsection

18 (3) can be used in making a certification decision under

19 this chapter;

20 (7) The board may grant only one waiver under

21 subsections (3) and (4) for each permanent loss of jobs as

22 defined in subsection (3)(a);

23 Section 20. Section 75-20-402, MCA, is amended to

24 read:

25 "75-20-402. Monitoring. The board, the department, the

1 department of health, and the board of health shall monitor
 2 the operations of all certificated facilities for assuring
 3 continuing compliance with this chapter and certificates
 4 issued hereunder and for discovering and preventing
 5 noncompliance with this chapter and the certificates. The
 6 applicant shall pay all expenses related to the monitoring
 7 plan established in subsection ~~(3)~~ (2)(a)(v)(iv) of
 8 75-20-303 to the extent federal funds available for the
 9 facility, as determined by the department of health, have
 10 not been provided for such purposes."

11 Section 21. Section 75-20-403, MCA, is amended to
 12 read:

13 "75-20-403. Revocation or suspension of certificate.
 14 A certificate may be revoked or suspended by the board
 15 following notice and opportunity for a hearing:

16 (1) for any material false statement in the
 17 application or in accompanying statements or studies
 18 required of the applicant if a true statement would have
 19 warranted the board's refusal to grant a certificate;

20 (2) for failure ~~to--maintain--safety--standards--or~~ to
 21 comply with the terms or conditions of the certificate; or

22 (3) for violation of any provision of this chapter,
 23 the rules issued thereunder, or orders of the board or
 24 department."

25 Section 22. Section 75-20-405, MCA, is amended to

1 read:

2 "75-20-405. Action to recover damages to water supply.
 3 An owner of an interest in real property who obtains all or
 4 part of his supply of water for domestic, agricultural,
 5 industrial, or other ~~legitimate~~ beneficial use from a
 6 surface or underground source may sue a person to recover
 7 damages for contamination, diminution, or interruption of
 8 the water supply proximately resulting from the operation of
 9 a facility. The remedies enumerated in this section do not
 10 exclude the use of any other remedy which may be available
 11 under the laws of the state."

12 Section 23. Section 75-20-408, MCA, is amended to
 13 read:

14 "75-20-408. Penalties for violation of chapter --
 15 civil action by attorney general. (1) (a) Whoever commences
 16 to construct or operate a facility without first obtaining a
 17 certificate required under 75-20-201 or a waiver thereof
 18 under 75-20-304(2) or having first obtained a certificate,
 19 constructs, operates, or maintains a facility other than in
 20 compliance with the certificate or violates any other
 21 provision of this chapter or any rule or order adopted
 22 thereunder or knowingly submits false information in any
 23 report, 10-year plan, or application required by this
 24 chapter or rule or order adopted thereunder or causes any of
 25 the aforementioned acts to occur is liable for a civil

penalty of not more than \$10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsections subsection (1) or (2), whenever the department determines that a person is violating ~~or is about to violate~~ any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the ~~earmarked revenue fund for the use of the department in administering this chapter~~ state general fund.

Section 24. Section 75-20-501, MCA, is amended to read:

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

(2) The plan shall be submitted by April 1 of each year and must include the following:

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

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

(c) a description of the efforts to involve

1 environmental protection and land use planning agencies in
 2 the planning process, as well as other efforts to identify
 3 and minimize environmental problems at the earliest possible
 4 stage in the planning process;

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

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

14 (3) The plan shall be furnished to the governing body
 15 of each county in which any facility included in the plan
 16 under (2)(a) of this section is proposed to be located and
 17 made available to the public by the department. The utility
 18 or person shall give public notice throughout the state of
 19 its plan by filing the plan with the environmental quality
 20 council, the department of health and environmental
 21 sciences, the department of highways, the department of
 22 public service regulation, the department of state lands,
 23 the department of fish, wildlife, and parks, and the
 24 department of commerce. ~~Citizen-environmental-protection-and~~
 25 ~~resource-planning-groups--and--other--interested~~ Interested

1 persons may obtain a plan by written request and payment
 2 therefor to the department.

3 (4) A rural electric cooperative may furnish the
 4 department with a copy of the long-range plan and 2-year
 5 work plan required to be completed under federal rural
 6 electrification requirements in lieu of the long-range plan
 7 required in subsection (1).

8 (5) No person may file an application for a facility
 9 unless the facility had been adequately identified in a
 10 long-range plan at least 2 years prior to acceptance of an
 11 application by the department."

12 Section 25. Section 75-20-502, MCA, is amended to
 13 read:

14 *75-20-502. Study of included facilities. If a utility
 15 or person lists and identifies a proposed facility in its
 16 plan, submitted pursuant to 75-20-501, as one on which
 17 construction is proposed to be commenced within the 5-year
 18 period following submission of the plan, the department
 19 shall commence examination and evaluation of the proposed
 20 site to determine whether construction of the proposed
 21 facility would unduly impair the environmental values in
 22 75-20-503. This study may be continued until such time as a
 23 person files an application for a certificate under
 24 75-20-211. Information gathered under this section may be
 25 used to support findings and recommendations required for

1 issuance of a certificate."

2 Section 26. Section 75-20-503, MCA, is amended to
3 read:

4 "75-20-503. Environmental factors evaluated. In
5 evaluating long-range plans, conducting 5-year site reviews,
6 and evaluating applications for certificates, the board and
7 department shall give consideration to the following list of
8 environmental factors, where applicable, ~~and may by rule add~~
9 ~~to the categories of this section:~~

- 10 (1) energy needs ~~requirements~~;
- 11 ~~(a) growth in demand and projections of need;~~
- 12 ~~(b) availability and desirability of alternative~~
13 ~~sources of energy;~~
- 14 ~~(c) availability and desirability of alternative~~
15 ~~sources of energy in lieu of the proposed facility;~~
- 16 ~~(d) promotional activities of the utility which may~~
17 ~~have given rise to the need for this facility;~~
- 18 ~~(e) socially beneficial uses of the output of this~~
19 ~~facility, including its uses to protect or enhance~~
20 ~~environmental quality;~~
- 21 ~~(f) conservation activities which could reduce the~~
22 ~~need for more energy;~~
- 23 ~~(g) research activities of the utility of new~~
24 ~~technology available to it which might minimize~~
25 ~~environmental impact;~~

1 (2) land use impacts:

- 2 (a) area of land required and ultimate use;
- 3 (b) consistency with areawide state and regional land
4 use plans;
- 5 (c) consistency with existing and projected nearby
6 land use;
- 7 (d) alternative uses of the site;
- 8 (e) impact on population already in the area,
9 population attracted by construction or operation of the
10 facility itself;
- 11 (f) impact of availability of energy from this
12 facility on growth patterns and population dispersal;
- 13 (g) geologic suitability of the site or route;
- 14 (h) seismologic characteristics;
- 15 (i) construction practices;
- 16 (j) extent of erosion, scouring, wasting of land, both
17 at site and as a result of fossil fuel demands of the
18 facility;
- 19 (k) corridor design and construction precautions for
20 transmission lines or aqueducts;
- 21 (l) scenic impacts;
- 22 (m) effects on natural systems, wildlife, plant life;
- 23 (n) impacts on important historic architectural,
24 archeological, and cultural areas and features;
- 25 (o) extent of recreation opportunities and related

1 compatible uses;

2 (p) public recreation plan for the project;

3 (q) public facilities and accommodation;

4 (r) opportunities for joint use with energy-intensive

5 industries or other activities to utilize the waste heat

6 from facilities;

7 (s) ~~for facilities described in 75-20-104(1)(b),~~

8 opportunities for using public lands for location of

9 facilities whenever as economically practicable as the use

10 of private lands and compatible with the requirements of

11 this section;

12 (3) water resources impacts:

13 (a) hydrologic studies of adequacy of water supply and

14 impact of facility on streamflow, lakes, and reservoirs;

15 (b) hydrologic studies of impact of facilities on

16 groundwater;

17 (c) cooling system evaluation, including consideration

18 of alternatives;

19 (d) inventory of effluents, including physical,

20 chemical, biological, and radiological characteristics;

21 (e) hydrologic studies of effects of effluents on

22 receiving waters, including mixing characteristics of

23 receiving waters, changed evaporation due to temperature

24 differentials, and effect of discharge on bottom sediments;

25 (f) relationship to water quality standards;

1 (g) effects of changes in quantity and quality on

2 water use by others, including both withdrawal and in situ

3 uses;

4 (h) relationship to projected uses;

5 (i) relationship to water rights;

6 (j) effects on plant and animal life, including algae,

7 macroinvertebrates, and fish population;

8 (k) effects on unique or otherwise significant

9 ecosystems, e.g., wetlands;

10 (l) monitoring programs;

11 (4) air quality impacts:

12 (a) meteorology--wind direction and velocity, ambient

13 temperature ranges, precipitation values, inversion

14 occurrence, other effects on dispersion;

15 (b) topography--factors affecting dispersion;

16 (c) standards in effect and projected for emissions;

17 (d) design capability to meet standards;

18 (e) emissions and controls:

19 (i) stack design;

20 (ii) particulates;

21 (iii) sulfur oxides;

22 (iv) oxides of nitrogen; and

23 (v) heavy metals, trace elements, radioactive

24 materials, and other toxic substances;

25 (f) relationship to present and projected air quality

1 of the area;

2 (g) monitoring program;

3 (5) solid wastes impacts:

4 (a) solid waste inventory;

5 (b) disposal program;

6 (c) relationship of disposal practices to

7 environmental quality criteria;

8 (d) capacity of disposal sites to accept projected

9 waste loadings;

10 (6) radiation impacts:

11 (a) land use controls over development and population;

12 (b) wastes and associated disposal program for solid,

13 liquid, radioactive, and gaseous wastes;

14 (c) analyses and studies of the adequacy of

15 engineering safeguards and operating procedures;

16 (d) monitoring--adequacy of devices and sampling

17 techniques;

18 (7) noise impacts:

19 (a) construction period levels;

20 (b) operational levels;

21 (c) relationship of present and projected noise levels

22 to existing ~~and-potential-stricter~~ noise level standards;

23 (1) monitoring--adequacy of devices and methods."

24 Section 27. Section 75-20-1202, MCA, is amended to

25 read:

1 "75-20-1202. Definitions. As used in this part and

2 75-20-201 through 75-20-203, the following definitions

3 apply:

4 (1) (a) "Nuclear facility" means each plant, unit, or

5 other facility designed for, or capable of:

6 (i) generating 50 megawatts of electricity or more by

7 means of nuclear fission;

8 (ii) converting, enriching, fabricating, or

9 reprocessing uranium minerals or nuclear fuels; or

10 (iii) storing or disposing of radioactive wastes or

11 materials from a nuclear facility;

12 (b) "Nuclear facility" does not include any

13 small-scale facility used solely for educational, research,

14 or medical purposes not connected with the commercial

15 generation of energy.

16 (2) "Facility" as defined in 75-20-104~~(7)~~ is

17 further defined to include any nuclear facility as defined

18 in subsection (1)(a) of this section."

19 Section 28. Section 75-20-1205, MCA, is amended to

20 read:

21 "75-20-1205. Emergency approval authority invalid for

22 nuclear facilities. Notwithstanding the provisions of

23 ~~subsections (2) and (3) of~~ 75-20-304~~(2)~~, the board may not

24 waive compliance with any of the provisions of this part or

25 75-20-201 through 75-20-203 relating to certification of a

- 1 nuclear facility."
- 2 ~~NEW SECTION.~~ Section 29. Effective date. This act is
- 3 effective on passage and approval.

-End-

SENATE BILL NO. 275

INTRODUCED BY KEATING, PAVLOVICH, SHAW, TVEIT,

ABRAMS, SWITZER, DEVLIN, HANSON, KOLSTAD

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; REDEFINING UTILITY; SPECIFYING THAT A CERTIFICATE OF PUBLIC NEED IS NOT REQUIRED FOR A NONUTILITY FACILITY; DELETING THE REQUIREMENT FOR ALTERNATE SITE STUDIES AND ALTERNATE ENERGY STUDIES; REDUCING TIMES ALLOWED FOR EVALUATION OF STUDIES; SPECIFYING HOW FEES PAID ARE TO BE USED; DIRECTING FINES AND PENALTIES TO BE PAID TO THE GENERAL FUND; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-105, 75-20-112, 75-20-201, 75-20-211 THROUGH 75-20-220, 75-20-222, 75-20-301, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-408, 75-20-501 THROUGH 75-20-503, 75-20-1202, AND 75-20-1205; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent

unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

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

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

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

1 the rules adopted hereunder.

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

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

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

13 (6) "Certificate" means the certificate of
14 environmental compatibility or, in the case of a utility, a
15 certificate of environmental compatibility and public need
16 issued by the board under this chapter that is required for
17 the construction or operation of a facility.

18 (7) "Commence to construct" means:

19 (a) any clearing of land, excavation, construction, or
20 other action that would affect the environment of the site
21 or route of a facility but does not mean changes needed for
22 temporary use of sites or routes for nonutility purposes or
23 uses in securing geological data, including necessary
24 borings to ascertain foundation conditions;

25 (b) the fracturing of underground formations by any

1 means if such activity is related to the possible future
2 development of a gasification facility or a facility
3 employing geothermal resources but does not include the
4 gathering of geological data by boring of test holes or
5 other underground exploration, investigation, or
6 experimentation;

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

10 (d) the relocation or upgrading of an existing
11 facility defined by (b) or (c) of subsection ~~(10)~~ (11),
12 including upgrading to a design capacity covered by
13 subsection ~~(10)~~(11)(b), except that the term does not
14 include normal maintenance or repair of an existing
15 facility.

16 ~~(8) "Cost" means the estimated cost in dollars at the~~
17 ~~time of proposed construction of THE ACCEPTANCE OF THE~~
18 ~~APPLICATION UNDER 75-20-214(A) FOR a facility or associated~~
19 ~~facility located in Montana.~~

20 ~~(9)(21)~~ "Department" means the department of natural
21 resources and conservation provided for in Title 2, chapter
22 15, part 33.

23 ~~(9)(10)~~ "Department of health" means the department of
24 health and environmental sciences provided for in Title 2,
25 chapter 15, part 21.

~~(10)~~(11) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

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

(ii) producing 25 million cubic feet or more of pipeline-quality gas derived from coal per day or any addition thereto having-an-estimated-cost-in-excess-of-\$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having-an-estimated-cost-in-excess-of-\$10-million;

(iv) enriching uranium minerals or any addition thereto having-an-estimated-cost-in-excess-of-\$10-million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having-an-estimated

cost-in-excess-of-\$10-million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 115 kilovolts--except-that-the-term-does-not-include-an-electric transmission-line-and--associated--facilities--of-a--design capacity--of-230-kilovolts-or-less and more_than 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection ~~(10)~~(11)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having-an-estimated-cost-in-excess-of-\$750,000;

(e) any underground in situ gasification of coal.

~~(11)~~(12) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~(13) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and

1 designed for voltage regulation, circuit protection, or
2 switching necessary for the construction or operation of a
3 proposed transmission line.

4 ~~{13}{14}~~ "Utility" means any--person--engaged--in--any
5 aspect--of--the--production--storage--safety--delivery--or
6 furnishing-of-heat-electricity-gas-hydrocarbon-products
7 or--energy--in--any--form--for--ultimate-public-use a person
8 furnishing energy within Montana and subject to rate of
9 return or rate regulation by a state or federal regulatory
10 body or protected from competition through a guaranteed
11 monopoly of service in a given service area."

12 Section 3. Section 75-20-105, MCA, is amended to read:

13 "75-20-105. Adoption of rules. The board may adopt
14 rules implementing the provisions of this chapter--including
15 but-not-limited-to-

16 {1}--rules--governing--the--form--and--content--of
17 applications;

18 {2}--rules--further--defining--the--terms--used--in--this
19 chapter;

20 {3}--rules-governing-the-form-and-content-of-long-range
21 plans;

22 {4}--any-other-rules-the-board-considers--necessary--to
23 accomplish-the-purposes-and-objectives-of-this-chapter."

24 Section 4. Section 75-20-112, MCA, is amended to read:

25 "75-20-112. Moneys to earmarked revenue fund. All

1 fees--taxes--fines--and--penalties collected under this
2 chapter shall be deposited in the earmarked revenue fund for
3 use by the department in carrying out its functions and
4 responsibilities under this chapter."

5 Section 5. Section 75-20-201, MCA, is amended to read:

6 "75-20-201. Certificate required -- operation in
7 conformance -- approval by popular vote of certificate for
8 nuclear facility. (1) A person may not commence to construct
9 a facility in the state without first applying for and
10 obtaining a certificate of-environmental-compatibility-and
11 public-need issued with respect to the facility by the
12 board.

13 (2) A facility with respect to which a certificate is
14 issued may not thereafter be constructed, operated, or
15 maintained except in conformity with the certificate and any
16 terms, conditions, and modifications contained therein.

17 (3) A certificate may only be issued pursuant to this
18 chapter.

19 (4) If the board decides to issue a certificate for a
20 nuclear facility, it shall report such recommendation to the
21 applicant and may not issue the certificate until such
22 recommendation is approved by a majority of the voters in a
23 statewide election called by initiative or referendum
24 according to the laws of this state."

25 Section 6. Section 75-20-211, MCA, is amended to read:

*75-20-211. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

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

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

~~+++a-statement-explaining-the-need-for-the-facility+~~

~~(((A STATEMENT EXPLAINING THE NEED FOR THE FACILITY.~~

~~IE.A.UIIIIY:~~

~~+++(IV) for facilities described in~~

~~75-20-104(1)(b),~~ a description of reasonable alternate locations for the proposed facility; a general description of the comparative merits and detriments of each location submitted; and a statement of the reasons why the primary proposed location is best suited for the facility;

~~+++(V) baseline data for the primary--and reasonable-alternate-locations location;~~

~~+++(VII) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and~~

~~+++(VII) such other relevant information as the applicant considers-relevant submits~~ or as the board and board of health by order or rule or the department and department of health by order or rule may require.

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

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

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

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of commerce;

(f) department of highways;

(g) department of revenue.

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

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

Section 7. Section 75-20-212, MCA, is amended to read:

"75-20-212. Cure for failure of service. Inadvertent ~~failure~~ ~~Failure~~ of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

Section 8. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as

set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines ~~documents to the applicant as necessary--or-the~~ ~~department-may-require-a-new-application-and-filing-fee.~~

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive."

Section 9. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104~~(10)~~~~(11)~~ at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its

1 preferred location, ~~a description of reasonable alternative~~
 2 ~~locations~~, and such available and relevant information as
 3 the board by rule or department by order requires. An
 4 applicant complying with this section is entitled to a 5%
 5 reduction of the filing fee required under 75-20-215."

6 Section 10. Section 75-20-215, MCA, is amended to
 7 read:

8 "75-20-215. Filing fee -- accountability -- refund --
 9 use. (1) (a) A filing fee shall be deposited in the
 10 earmarked revenue fund for the use of the department in
 11 administering this chapter. The applicant shall pay to the
 12 department a filing fee as provided in this section based
 13 upon the department's estimated costs of processing the
 14 application under this chapter, but which shall not exceed
 15 the following scale based upon the estimated cost of the
 16 facility:

- 17 (i) 2% of any estimated cost up to \$1 million; plus
- 18 (ii) 1% of any estimated cost over \$1 million and up to
- 19 \$20 million; plus
- 20 (iii) 0.5% of any estimated cost over \$20 million and
- 21 up to \$100 million; plus
- 22 (iv) 0.25% of any amount of estimated cost over \$100
- 23 million and up to \$300 million; plus
- 24 (v) .125% of any amount of estimated cost over \$300
- 25 million; UP TO \$1 BILLION; plus

1 (vi) .05% of any amount over \$1 billion.

2 (b) The department ~~may allow in its discretion~~ shall
 3 grant a credit against the fee payable under this section
 4 for the development of information or providing of services
 5 required hereunder or required for preparation of an
 6 environmental impact statement under the Montana or national
 7 environmental policy acts. The applicant may submit the
 8 information to the department together with an accounting of
 9 the expenses incurred in preparing the information. The
 10 department shall evaluate the applicability, validity, and
 11 usefulness of the data and determine the amount which may be
 12 credited against the filing fee payable under this section.
 13 Upon 30 days' notice to the applicant, this credit may at
 14 any time be reduced if the department determines documents
 15 to the applicant that it is necessary to carry out its
 16 responsibilities under this chapter.

17 (2) (a) The department may contract with an applicant
 18 for the development of information, provision of services
 19 and payment of fees required under this chapter. The
 20 contract may continue an agreement entered into pursuant to
 21 75-20-106. Payments made to the department under such a
 22 contract shall be credited against the fee payable
 23 hereunder. Notwithstanding the provisions of this section,
 24 the revenue derived from the filing fee must be sufficient
 25 to enable the department, the department of health, the

1 board, the board of health, and the agencies listed in
 2 75-20-216(5) to carry out their responsibilities under this
 3 chapter. The department may amend a contract to require
 4 additional payments for necessary expenses up to the limits
 5 set forth in subsection (1)(a) above upon 30 days' notice to
 6 the applicant. The department and applicant may enter into
 7 a contract which exceeds the scale provided in subsection
 8 (1)(a).

9 (b) If a contract is not entered into, the applicant
 10 shall pay the filing fee in installments in accordance with
 11 a schedule of installments developed by the department,
 12 provided that no one installment may exceed 20% of the total
 13 filing fee provided for in subsection (1).

14 (3) The estimated cost of upgrading an existing
 15 transmission substation may not be included in the estimated
 16 cost of a proposed facility for the purpose of calculating a
 17 filing fee.

18 (4) If an application consists of a combination of two
 19 or more facilities, the filing fee shall be based on the
 20 total estimated cost of the combined facilities.

21 (5) The applicant is entitled to an accounting of
 22 moneys expended and to a refund with interest at the rate of
 23 6% a year of that portion of the filing fee not expended by
 24 the department in carrying out its responsibilities under
 25 this chapter. A refund shall be made after all

1 administrative and judicial remedies have been exhausted by
 2 all parties to the certification proceedings.

3 (6) The revenues derived from filing fees shall be
 4 used by the department in compiling the information required
 5 for rendering a decision on a certificate and for carrying
 6 out its and the board's other responsibilities under this
 7 chapter."

8 Section 11. Section 75-20-216, MCA, is amended to
 9 read:

10 "75-20-216. Study, evaluation, and report on proposed
 11 facility -- assistance by other agencies. (1) After receipt
 12 of an application, the department and department of health
 13 shall within 90 days notify the applicant in writing that:

14 (a) the application is in compliance and is accepted
 15 as complete; or

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

22 (2) Upon receipt of an application complying with
 23 75-20-211 through 75-20-215, and this section, the
 24 department shall commence an intensive study and evaluation
 25 of the proposed facility and its effects, considering all

1 applicable criteria listed in 75-20-301 and 75-20-503 and
 2 the department of health shall commence a study to enable it
 3 or the board of health to issue a decision, opinion, order,
 4 certification, or permit as provided in subsection (3). The
 5 department and department of health shall use, to the extent
 6 they consider applicable, valid and useful existing studies
 7 and reports submitted by the applicant or compiled by a
 8 state or federal agency.

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

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

18 (4) Within ~~22 months~~ 1 year following acceptance of an
 19 application for a facility as defined in ~~(a) and (d) of~~
 20 75-20-104(10)(11) ~~and for a facility as defined in (b) and~~
 21 ~~(c) of 75-20-104(10) which is more than 30 miles in length~~
 22 ~~and within 1 year for a facility as defined in (b) and (c)~~
 23 ~~of 75-20-104(10) which is 30 miles or less in length,~~ the
 24 department shall make a report to the board which shall
 25 contain the department's studies, evaluations,

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

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

19 Section 12. Section 75-20-217, MCA, is amended to
 20 read:

21 "75-20-217. Voiding an application. An application may
 22 be voided, ~~following notice and an opportunity for a~~
 23 ~~hearing,~~ by the department for:

24 (1) any material and knowingly false statement in the
 25 application or in accompanying statements or studies

1 required of the applicant;

2 (2) failure to file an application in substantially
 3 the form and content required by this chapter and the rules
 4 adopted thereunder; or

5 (3) failure to deposit the filing fee as provided in
 6 75-20-215."

7 Section 13. Section 75-20-218, MCA, is amended to
 8 read:

9 "75-20-218. Hearing date -- location -- department to
 10 act as staff -- hearings to be held jointly. (1) Upon
 11 receipt of the department's report submitted under
 12 75-20-216, the board shall set a date for a hearing to begin
 13 not more than 120 days after the receipt. Except for those
 14 hearings involving applications submitted for facilities as
 15 defined in (b) and (c) of 75-20-104~~(10)~~(11), certification
 16 hearings shall be conducted by the board in the county seat
 17 of Lewis and Clark County or the county in which the
 18 facility or the greater portion thereof is to be located.

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

24 (3) At the request of the applicant, the department of
 25 health and the board of health shall hold any required

1 permit hearings required under laws administered by those
2 agencies in conjunction with the board certification
3 hearing. In such a conjunctive hearing the time periods
4 established for reviewing an application and for issuing a
5 decision on certification of a proposed facility under this
6 chapter supersede the time periods specified in other laws
7 administered by the department of health and the board of
8 health."

9 Section 14. Section 75-20-219, MCA, is amended to
10 read:

11 "75-20-219. Amendments to a certificate. (1) Within 30
12 days after notice of an amendment to a certificate is given
13 as set forth in 75-20-213(1), including notice to all active
14 parties to the original proceeding, the department shall
15 determine whether the proposed change in the facility would
16 result in any material increase in any environmental impact
17 of the facility or a substantial change in the location of
18 ~~all--or--a-portion-of-the-facility-other-than-as-provided-in~~
19 ~~the-alternates~~ as set forth in the original application. If
20 the department determines that the proposed change would
21 result in any material increase in any environmental impact
22 of the facility or a substantial change in the location of
23 ~~all--or--a-portion-of~~ the facility, the board shall hold a
24 hearing in the same manner as a hearing is held on an
25 application for a certificate. After hearing, the board

1 shall grant, deny, or modify the amendment with such
2 conditions as it deems appropriate.

3 (2) In those cases where the department determines
4 that the proposed change in the facility would not result in
5 any material increase in any environmental impact or would
6 not be a substantial change in the location of--~~all--or--a~~
7 ~~portion~~ of the facility, the board shall automatically grant
8 the amendment either as applied for or upon such terms or
9 conditions as the board considers appropriate unless the
10 department's determination is appealed to the board within
11 15 days after notice of the department's determination is
12 given.

13 (3) If the department or the board under subsection
14 (4) determines that a hearing is required because the
15 proposed change would result in any material increase in any
16 environmental impact of the facility or a substantial change
17 in the location of--~~all--or--a-portion~~ of the facility, the
18 applicant has the burden of showing by clear and convincing
19 evidence that the amendment should be granted.

20 (4) If the department determines that the proposed
21 change in the facility would not result in any a material
22 increase in any environmental impact or would not be a
23 substantial change in the location of--~~all--or--a--portion~~ of
24 the facility, and a hearing is required because the
25 department's determination is appealed to the board as

1 provided in subsection (2), the appellant has the burden of
 2 showing by clear and convincing evidence that the proposed
 3 change in the facility would result in any a material
 4 increase in any environmental impact of the facility or a
 5 substantial change in the location of ~~all or a portion~~ of
 6 the facility ~~other than as provided in the alternates set~~
 7 ~~forth in the original application.~~

8 (5) If an amendment is required to a certificate which
 9 would affect, amend, alter or modify a decision, opinion,
 10 order, certification, or permit issued by the department of
 11 health or board of health, such amendment must be processed
 12 under the applicable statutes administered by the department
 13 of health or board of health."

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

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

1 department of health shall mutually agree on the appointment
 2 of a hearing examiner to preside at both hearings.

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

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

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

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

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

1 hearing examiner shall prescribe.

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

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

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

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

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

13 Section 16. Section 75-20-222, MCA, is amended to
14 read:

15 "75-20-222. Record of hearing -- procedure -- rules of
16 evidence -- burden of proof. (1) Any studies,
17 investigations, reports, or other documentary evidence,
18 including those prepared by the department, which any party
19 wishes the board to consider or which the board itself
20 expects to utilize or rely upon shall be made a part of the
21 record.

22 (2) A record shall be made of the hearing and of all
23 testimony taken.

24 (3) In a certification proceeding held under this
25 chapter, the applicant has the burden of showing by clear

1 and convincing evidence that the application should be
2 granted and that the criteria of 75-20-301 are met.

3 (4) All proceedings under this chapter are governed by
4 the procedures set forth in this chapter, the procedural
5 rules adopted by the board, and the Montana Rules of
6 Evidence unless one or more rules of evidence are waived by
7 the hearing examiner upon a showing of good cause by one or
8 more of the parties to the hearing. No other rules of
9 procedure or evidence shall apply except that the contested
10 case procedures of the Montana Administrative Procedure Act
11 shall apply if not in conflict with the procedures set forth
12 in this chapter ~~or--the--procedural--rules--adopted--by--the~~
13 ~~board."~~

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

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

25 (2) The board may not grant a certificate either as

1 proposed by the applicant or as modified by the board unless
2 it shall find and determine:

3 (a) the basis of the need for the facility, if a
4 utility facility;

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

6 (c) that the facility represents the minimum adverse
7 environmental impact, considering the state of available
8 technology ~~and--the--nature--and--economies--of--the--various~~
9 ~~alternatives~~;

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

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

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

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

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

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

~~restrictive--in--view-of-the-existing-technology-of-factors
of-cost-or-economics-or-of-the-needs-of-consumers--whether
located---inside---or---outside--of--the--directly--affected
government-subdivisions;~~

(g) that the facility will serve the public interest,
~~convenience-and-necessity;~~

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

(i) for facilities described in 75-20-104(1)(b), that
the use of public lands for location of the facility was
evaluated and public lands were selected whenever their use
is as economically practicable as the use of private lands
and compatible with the environmental criteria listed in
75-20-503.

(3) In determining that the facility, IF A UTILITY,
will serve the public interest, ~~convenience--and--necessity~~
under subsection (2)(g) of this section, the board shall
consider:

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

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

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

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

~~(e)--any-other-factors-that-it-considers-relevant~~

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

Section 18. Section 75-20-303, MCA, is amended to
read:

"75-20-303. Opinion issued with decision -- contents.

(1) In rendering a decision on an application for a
certificate, the board shall issue an opinion stating its
reasons for the action taken.

~~(2)--If--the-board-has-found-that-any-regional-or-local
law-or-regulation-which-would--be--otherwise--applicable--is
unreasonably--restrictive--pursuant--to--75-20-301(2)(f)--it
shall-state-in-its-opinion-the-reasons-therefor~~

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

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

(i) the environmental impact of the proposed facility;

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

(iii) problems and objections raised by other federal

1 and state agencies and interested groups;
 2 ~~(iv)-alternatives-to-the-proposed-facility;~~
 3 ~~(v)(iv)~~ a plan for monitoring environmental effects of
 4 the proposed facility; and
 5 ~~(v)(iv)~~ a time limit as provided in subsection ~~(4)~~
 6 ~~(3)~~, during which construction of the facility must be
 7 completed;
 8 (b) a statement signed by the applicant showing
 9 agreement to comply with the requirements of this chapter
 10 and the conditions of the certificate.
 11 ~~(4)(3)~~ The board shall issue as part of the
 12 certificate the following time limits during which
 13 construction of a facility must be completed:
 14 (a) For a facility as defined in (b) ~~or--(e)~~ of
 15 75-20-104~~(7)(11)~~ that is more than 30 miles in length, the
 16 time limit is 10 years.
 17 (b) For a facility as defined in (b) ~~or--(e)~~ of
 18 75-20-104~~(7)(11)~~ that is 30 miles or less in length, the
 19 time limit is 5 years.
 20 (c) The time limit shall be extended for periods of 2
 21 years each upon a showing by the applicant to the board that
 22 a good faith effort is being undertaken to complete
 23 construction. Under this subsection, a good faith effort to
 24 complete construction includes the process of acquiring any
 25 necessary state or federal permit or certificate for the

1 facility and the process of judicial review of any such
 2 permit or certificate.
 3 ~~(5)(4)~~ The provisions of subsection ~~(4)~~ ~~(3)~~ apply to
 4 any facility for which a certificate has not been issued or
 5 for which construction is yet to be commenced."
 6 Section 19. Section 75-20-304, MCA, is amended to
 7 read:
 8 "75-20-304. Waiver of provisions of certification
 9 proceedings. (1) The board may waive compliance with any of
 10 the provisions of 75-20-216 through 75-20-222, 75-20-501,
 11 and this part if the applicant makes a clear and convincing
 12 showing to the board at a public hearing that an immediate,
 13 urgent need for a facility exists and that the applicant did
 14 not have knowledge that the need for the facility existed
 15 sufficiently in advance to fully comply with the provisions
 16 of 75-20-216 through 75-20-222, 75-20-501, and this part.
 17 (2) The board may waive compliance with any of the
 18 provisions of this chapter upon receipt of notice by a
 19 ~~entity-or-person persons~~ subject to this chapter that a
 20 facility or associated facility has been damaged or
 21 destroyed as a result of fire, flood, or other natural
 22 disaster or as the result of insurrection, war, or other
 23 civil disorder and there exists an immediate need for
 24 construction of a new facility or associated facility or the
 25 relocation of a previously existing facility or associated

1 facility in order to promote the public welfare.

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

9 (a) a proposed facility will be constructed in a
10 county where a single employer within the county has
11 permanently curtailed or ceased operations causing a loss of
12 250 or more permanent jobs within 2 years at the employer's
13 operations within the preceding 10-year period;

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

17 (c) the proposed facility will be constructed within a
18 15-mile radius of the operations that have ceased or been
19 curtailed; and

20 (d) the proposed facility will have a beneficial
21 effect on the economy of the county in which the facility is
22 proposed to be located;

23 {4}--The waiver provided for in subsection (3) applies
24 only to permanent job losses by a single employer. The
25 waiver provided for in subsection (3) does not apply to jobs

1 of a temporary or seasonal nature, including but not limited
2 to construction jobs or job losses during labor disputes.

3 {5}--The waiver provided for in subsection (3) does not
4 apply to consideration of alternatives or minimum adverse
5 environmental impact for a facility defined in subsections
6 (10)(b), (c), (d), or (e) of 75-20-104, for an associated
7 facility defined in subsection (3) of 75-20-104, or for any
8 portion of or process in a facility defined in subsection
9 (10)(a) of 75-20-104 to the extent that the process or
10 portion of the facility is not subject to a permit issued by
11 the department of health or board of health.

12 {6}--The applicant shall pay all expenses required to
13 process and conduct a hearing on a waiver request under
14 subsection (3). However, any payments made under this
15 subsection shall be credited toward the fee paid under
16 75-20-215 to the extent the data or evidence presented at
17 the hearing or the decision of the board under subsection
18 (3) can be used in making a certification decision under
19 this chapter.

20 {7}--The board may grant only one waiver under
21 subsections (3) and (4) for each permanent loss of jobs as
22 defined in subsection (3)(a)."

23 Section 20. Section 75-20-402, MCA, is amended to
24 read:

25 "75-20-402. Monitoring. The board, the department, the

1 department of health, and the board of health shall monitor
 2 the operations of all certificated facilities for assuring
 3 continuing compliance with this chapter and certificates
 4 issued hereunder and for discovering and preventing
 5 noncompliance with this chapter and the certificates. The
 6 applicant shall pay all expenses related to the monitoring
 7 plan established in subsection ~~(3)~~ ~~(2)(a)(v)~~ ~~(ix)~~ of
 8 75-20-303 to the extent federal funds available for the
 9 facility, as determined by the department of health, have
 10 not been provided for such purposes."

11 Section 21. Section 75-20-403, MCA, is amended to
 12 read:

13 "75-20-403. Revocation or suspension of certificate.
 14 A certificate may be revoked or suspended by the board
 15 following notice and opportunity for a hearing:

16 (1) for any material false statement in the
 17 application or in accompanying statements or studies
 18 required of the applicant if a true statement would have
 19 warranted the board's refusal to grant a certificate;

20 (2) for failure ~~to--maintain--safety--standards--or~~ to
 21 comply with the terms or conditions of the certificate; or

22 (3) for violation of any provision of this chapter,
 23 the rules issued thereunder, or orders of the board or
 24 department."

25 Section 22. Section 75-20-405, MCA, is amended to

1 read:

2 "75-20-405. Action to recover damages to water supply.
 3 An owner of an interest in real property who obtains all or
 4 part of his supply of water for domestic, agricultural,
 5 industrial, or other ~~legitimate~~ beneficial use from a
 6 surface or underground source may sue a person to recover
 7 damages for contamination, diminution, or interruption of
 8 the water supply proximately resulting from the operation of
 9 a facility. The remedies enumerated in this section do not
 10 exclude the use of any other remedy which may be available
 11 under the laws of the state."

12 Section 23. Section 75-20-408, MCA, is amended to
 13 read:

14 "75-20-408. Penalties for violation of chapter --
 15 civil action by attorney general. (1) (a) Whoever commences
 16 to construct or operate a facility without first obtaining a
 17 certificate required under 75-20-201 or a waiver thereof
 18 under 75-20-304(2) or having first obtained a certificate,
 19 constructs, operates, or maintains a facility other than in
 20 compliance with the certificate or violates any other
 21 provision of this chapter or any rule or order adopted
 22 thereunder or knowingly submits false information in any
 23 report, 10-year plan, or application required by this
 24 chapter or rule or order adopted thereunder or causes any of
 25 the aforementioned acts to occur is liable for a civil

1 penalty of not more than \$10,000 for each violation.

2 (b) Each day of a continuing violation constitutes a
3 separate offense.

4 (c) The penalty is recoverable in a civil suit brought
5 by the attorney general on behalf of the state in the
6 district court of the first judicial district of Montana.

7 (2) Whoever knowingly and willfully violates
8 subsection (1) shall be fined not more than \$10,000 for each
9 violation or imprisoned for not more than 1 year, or both.
10 Each day of a continuing violation constitutes a separate
11 offense.

12 (3) In addition to any penalty provided in ~~subsections~~
13 ~~subsection~~ (1) or (2), whenever the department determines
14 that a person is violating ~~or is about to violate~~ any of the
15 provisions of this section, it may refer the matter to the
16 attorney general who may bring a civil action on behalf of
17 the state in the district court of the first judicial
18 district of Montana for injunctive or other appropriate
19 relief against the violation and to enforce this chapter or
20 a certificate issued hereunder. Upon a proper showing, a
21 permanent or preliminary injunction or temporary restraining
22 order shall be granted without bond.

23 (4) The department shall also enforce this chapter and
24 bring legal actions to accomplish the enforcement through
25 its own legal counsel.

1 (5) All fines and penalties collected shall be
2 deposited in the ~~earmarked-revenue-fund-for-the-use-of-the~~
3 ~~department--in--administering--this--chapter~~ state general
4 fund."

5 Section 24. Section 75-20-501, MCA, is amended to
6 read:

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

13 (2) The plan shall be submitted by April 1 of each
14 year and must include the following:

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

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

25 (c) a description of the efforts to involve

1 environmental protection and land use planning agencies in
2 the planning process, as well as other efforts to identify
3 and minimize environmental problems at the earliest possible
4 stage in the planning process;

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

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

14 (3) The plan shall be furnished to the governing body
15 of each county in which any facility included in the plan
16 under (2)(a) of this section is proposed to be located and
17 made available to the public by the department. The utility
18 or person shall give public notice throughout the state of
19 its plan by filing the plan with the environmental quality
20 council, the department of health and environmental
21 sciences, the department of highways, the department of
22 public service regulation, the department of state lands,
23 the department of fish, wildlife, and parks, and the
24 department of commerce. ~~Citizen environmental protection and~~
25 ~~resource planning groups and other interested interested~~

1 persons may obtain a plan by written request and payment
2 therefor to the department.

3 (4) A rural electric cooperative may furnish the
4 department with a copy of the long-range plan and 2-year
5 work plan required to be completed under federal rural
6 electrification requirements in lieu of the long-range plan
7 required in subsection (1).

8 (5) No person may file an application for a facility
9 unless the facility had been adequately identified in a
10 long-range plan at least 2 years prior to acceptance of an
11 application by the department."

12 Section 25. Section 75-20-502, MCA, is amended to
13 read:

14 "75-20-502. Study of included facilities. If a utility
15 or person lists and identifies a proposed facility in its
16 plan, submitted pursuant to 75-20-501, as one on which
17 construction is proposed to be commenced within the 5-year
18 period following submission of the plan, the department
19 shall commence examination and evaluation of the proposed
20 site to determine whether construction of the proposed
21 facility would unduly impair the environmental values in
22 75-20-503. This study may be continued until such time as a
23 person files an application for a certificate under
24 75-20-211. Information gathered under this section may be
25 used to support findings and recommendations required for

1 issuance of a certificate."

2 Section 26. Section 75-20-503, MCA, is amended to
3 read:

4 "75-20-503. Environmental factors evaluated. In
5 evaluating long-range plans, conducting 5-year site reviews,
6 and evaluating applications for certificates, the board and
7 department shall give consideration to the following list of
8 environmental factors, where applicable, and may by rule add
9 to the categories of this section:

10 (1) energy needs* requirements:

11 ~~(a) growth in demand and projections of need;~~

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

14 ~~(c) availability and desirability of alternative~~
15 ~~sources of energy in lieu of the proposed facility;~~

16 ~~(d) promotional activities of the utility which may~~
17 ~~have given rise to the need for this facility;~~

18 ~~(e) socially beneficial uses of the output of this~~
19 ~~facility, including its uses to protect or enhance~~
20 ~~environmental quality;~~

21 ~~(f) conservation activities which could reduce the~~
22 ~~need for more energy;~~

23 ~~(g) research activities of the utility of new~~
24 ~~technology available to it which might minimize~~
25 ~~environmental impacts;~~

1 (2) land use impacts:

2 (a) area of land required and ultimate use;

3 (b) consistency with areawide state and regional land
4 use plans;

5 (c) consistency with existing and projected nearby
6 land use;

7 (d) alternative uses of the site;

8 (e) impact on population already in the area,
9 population attracted by construction or operation of the
10 facility itself;

11 (f) impact of availability of energy from this
12 facility on growth patterns and population dispersal;

13 (g) geologic suitability of the site or route;

14 (h) seismologic characteristics;

15 (i) construction practices;

16 (j) extent of erosion, scouring, wasting of land, both
17 at site and as a result of fossil fuel demands of the
18 facility;

19 (k) corridor design and construction precautions for
20 transmission lines or aqueducts;

21 (l) scenic impacts;

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

23 (n) impacts on important historic architectural,
24 archeological, and cultural areas and features;

25 (o) extent of recreation opportunities and related

1 compatible uses;

2 (p) public recreation plan for the project;

3 (q) public facilities and accommodation;

4 (r) opportunities for joint use with energy-intensive

5 industries or other activities to utilize the waste heat

6 from facilities;

7 (s) for facilities described in 75-20-104(i)(b),

8 opportunities for using public lands for location of

9 facilities whenever as economically practicable as the use

10 of private lands and compatible with the requirements of

11 this section;

12 (3) water resources impacts:

13 (a) hydrologic studies of adequacy of water supply and

14 impact of facility on streamflow, lakes, and reservoirs;

15 (b) hydrologic studies of impact of facilities on

16 groundwater;

17 (c) cooling system evaluation, including consideration

18 of alternatives;

19 (d) inventory of effluents, including physical,

20 chemical, biological, and radiological characteristics;

21 (e) hydrologic studies of effects of effluents on

22 receiving waters, including mixing characteristics of

23 receiving waters, changed evaporation due to temperature

24 differentials, and effect of discharge on bottom sediments;

25 (f) relationship to water quality standards;

1 (g) effects of changes in quantity and quality on

2 water use by others, including both withdrawal and in situ

3 uses;

4 (h) relationship to projected uses;

5 (i) relationship to water rights;

6 (j) effects on plant and animal life, including algae,

7 macroinvertebrates, and fish population;

8 (k) effects on unique or otherwise significant

9 ecosystems, e.g., wetlands;

10 (l) monitoring programs;

11 (4) air quality impacts:

12 (a) meteorology--wind direction and velocity, ambient

13 temperature ranges, precipitation values, inversion

14 occurrence, other effects on dispersion;

15 (b) topography--factors affecting dispersion;

16 (c) standards in effect and projected for emissions;

17 (d) design capability to meet standards;

18 (e) emissions and controls:

19 (i) stack design;

20 (ii) particulates;

21 (iii) sulfur oxides;

22 (iv) oxides of nitrogen; and

23 (v) heavy metals, trace elements, radioactive

24 materials, and other toxic substances;

25 (f) relationship to present and projected air quality

1 of the area;

2 (g) monitoring program;

3 (5) solid wastes impacts:

4 (a) solid waste inventory;

5 (b) disposal program;

6 (c) relationship of disposal practices to

7 environmental quality criteria;

8 (d) capacity of disposal sites to accept projected

9 waste loadings;

10 (6) radiation impacts:

11 (a) land use controls over development and population;

12 (b) wastes and associated disposal program for solid,

13 liquid, radioactive, and gaseous wastes;

14 (c) analyses and studies of the adequacy of

15 engineering safeguards and operating procedures;

16 (d) monitoring--adequacy of devices and sampling

17 techniques;

18 (7) noise impacts:

19 (a) construction period levels;

20 (b) operational levels;

21 (c) relationship of present and projected noise levels

22 to existing ~~and-potential-stricter~~ noise level standards;

23 (d) monitoring--adequacy of devices and methods."

24 Section 27. Section 75-20-1202, MCA, is amended to

25 read:

1 "75-20-1202. Definitions. As used in this part and

2 75-20-201 through 75-20-203, the following definitions

3 apply:

4 (1) (a) "Nuclear facility" means each plant, unit, or

5 other facility designed for, or capable of:

6 (i) generating 50 megawatts of electricity or more by

7 means of nuclear fission;

8 (ii) converting, enriching, fabricating, or

9 reprocessing uranium minerals or nuclear fuels; or

10 (iii) storing or disposing of radioactive wastes or

11 materials from a nuclear facility;

12 (b) "nuclear ~~Nuclear~~ facility" does not include any

13 small-scale facility used solely for educational, research,

14 or medical purposes not connected with the commercial

15 generation of energy.

16 (2) "Facility" as defined in 75-20-104(7) is

17 further defined to include any nuclear facility as defined

18 in subsection (1)(a) of this section."

19 Section 28. Section 75-20-1205, MCA, is amended to

20 read:

21 "75-20-1205. Emergency approval authority invalid for

22 nuclear facilities. Notwithstanding the provisions of

23 ~~subsections (2) and (3) of~~ 75-20-304(2), the board may not

24 waive compliance with any of the provisions of this part or

25 75-20-201 through 75-20-203 relating to certification of a

- 1 nuclear facility."
- 2 NEW_SECTION. Section 29. Effective date. This act is
- 3 effective on passage and approval.

-End-