

HOUSE BILL NO. 362

INTRODUCED BY BARDANOUVE, MARKS

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE HOUSE

January 22, 1985	Introduced and referred to Committee on Natural Resources.
January 23, 1985	Fiscal Note requested.
January 28, 1985	Fiscal Note returned.
February 16, 1985	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
	Bill printed and placed on members' desks.
February 18, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 19, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 21, 1985	Introduced and referred to Committee on Natural Resources.
March 12, 1985	Committee recommend bill be concurrent in. Report adopted.

March 14, 1985

Second reading, concurred in.

March 16, 1985

Third reading, concurred in.
Ayes, 47; Noes, 0.

Returned to House.

IN THE HOUSE

March 16, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 362
 2 INTRODUCED BY Brian Anderson
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RENEWAL
 7 OF CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC
 8 NEED ISSUED UNDER THE MONTANA MAJOR FACILITY SITING ACT;
 9 AMENDING SECTIONS 75-20-302 AND 75-20-303, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 75-20-302, MCA, is amended to read:
 14 "75-20-302. Conditions imposed. (1) If the board
 15 determines that the location of all or a part of the
 16 proposed facility should be modified, it may condition its
 17 certificate upon such modification, provided that the
 18 persons residing in the area affected by the modification
 19 have been given reasonable notice of the modification.

20 (2) In making its findings under 75-20-301(2)(a), the
 21 board may condition a certificate upon actual load growth
 22 reaching a specified level within a specified time or on
 23 availability of other energy resources."

24 Section 2. Section 75-20-303, MCA, is amended to read:
 25 "75-20-303. Opinion issued with decision -- contents.

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

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

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

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

13 (i) the environmental impact of the proposed facility;
 14 (ii) any adverse environmental effects which cannot be
 15 avoided by issuance of the certificate;

16 (iii) problems and objections raised by other federal
 17 and state agencies and interested groups; and

18 (iv) alternatives to the proposed facility;
 19 ~~(v)~~ (b) a plan for monitoring environmental effects of
 20 the proposed facility; and

21 ~~(vi)~~ (c) a time limit as provided in subsection (4)
 22 ~~during which construction of the facility must be completed;~~
 23 and

24 ~~(b)~~ (d) a statement signed by the applicant showing
 25 agreement to comply with the requirements of this chapter



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1 and the conditions of the certificate.

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

5 ~~(a)(i) For a facility as defined in (b) or (c) of~~
6 ~~75-20-104(10) that is more than 30 miles in length, the-time~~
7 ~~limit-is construction must be completed within 10 years.~~

8 ~~(b)(ii) For a facility as defined in (b) or (c) of~~
9 ~~75-20-104(10) that is 30 miles or less in length, the-time~~
10 ~~limit-is construction must be completed within 5 years.~~

11 ~~(iii) For a facility as defined in (a) of~~
12 ~~75-20-104(10), construction must begin within 6 years and~~
13 ~~continue with due diligence in accordance with the~~
14 ~~construction schedule established in the certificate.~~

15 ~~(b) Unless extended or renewed in accordance with~~
16 ~~subsection (4)(c) or [sections 3 through 5], a certificate~~
17 ~~lapses and is void if the facility is not constructed or if~~
18 ~~construction of the facility is not commenced within the~~
19 ~~time limits provided in this section.~~

20 (c) The time limit shall be extended for periods a
21 period of 2 years each upon a showing by the applicant to
22 the board that a good faith effort is being undertaken to
23 complete construction. Under this subsection, a good faith
24 effort to complete construction includes the process of
25 acquiring any necessary state or federal permit or

1 certificate for the facility and the process of judicial
2 review of any such permit or certificate.

3 (5) The provisions of subsection (4) apply to any
4 facility for which a certificate has not been issued or for
5 which construction is yet to be commence "

6 NEW SECTION. Section 3. Certificate renewal --
7 application -- contents -- filing fee. (1) Any certificate
8 holder for a facility as defined in 75-20-104(10)(a)(i) may
9 apply for renewal of a certificate prior to the certificate
10 lapsing.

11 (2) An applicant for a renewal of a certificate shall
12 file with the department and department of health a joint
13 application in such form as the board requires by rule.

14 (3) An application for renewal of a certificate must
15 include updated information on the matters listed in
16 75-20-211(1)(a) that have changed since the original
17 application and such other information as the board requires
18 by rule for certification. The matters listed in
19 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
20 locations must be updated only if the board determines that
21 within the certified location significant changes have
22 occurred to warrant a review of alternate locations.

23 (4) An application filed under subsection (1) must
24 comply with the provisions of 75-20-211(3) through (5).

25 (5) Except as provided in this subsection, the

1 applicant shall pay a filing fee to the department in
 2 accordance with 75-20-215(2). The fee is in addition to any
 3 previous filing fee paid for processing the original
 4 application for a certificate pursuant to 75-20-215. The fee
 5 may not exceed the following scale:

6 (a) 0.125% of any estimated cost up to \$300 million;
 7 plus

8 (b) 0.063% of any estimated cost over \$300 million.

9 NEW SECTION. Section 4. Renewal study. (1) Upon
 10 receipt of a completed application for renewal of a
 11 certificate, the department shall evaluate the updated
 12 information and any significant changes in need,
 13 alternatives, technology, baseline environment, and the
 14 environmental impacts of a facility that have taken place
 15 since the original study performed in granting the
 16 certificate, considering the applicable criteria listed in
 17 75-20-301 and 75-20-503 and the original board findings and
 18 certificate conditions.

19 (2) The department of health and the board of health,
 20 within 10 months of acceptance of a complete renewal
 21 application, shall complete the statutory duties established
 22 in 75-20-216(3). A copy of any decision, opinion, order,
 23 certification, or permit must be served on the department
 24 and the board and must be used as part of their
 25 decisionmaking process.

1 (3) Within 12 months following acceptance of a
 2 complete application for renewal of a certificate, the
 3 department shall make a report to the board. This report
 4 must contain the department's studies, evaluations,
 5 recommendations, and other pertinent documents resulting
 6 from its study and evaluation and any updated environmental
 7 impact statement or analysis pursuant to the Montana
 8 Environmental Policy Act. The department's report must be
 9 directed to the question of whether the original board
 10 findings and conditions have been or need to be altered as a
 11 result of any significant changes in need, alternatives,
 12 technology, baseline environment, or environmental impact
 13 since issuance of the certificate, considering the
 14 applicable criteria listed in 75-20-301 and 75-20-503.

15 (4) The departments of highways; commerce; fish,
 16 wildlife, and parks; state lands; revenue; and public
 17 service regulation shall report to the department
 18 information relating to the impact of the proposed site on
 19 each department's area of responsibility. The report may
 20 include opinions as to the advisability of renewing the
 21 certificate. The department shall allocate funds obtained
 22 from filing fees to the departments making reports to
 23 reimburse them for the cost of compiling information and
 24 issuing the required reports.

25 NEW SECTION. Section 5. Certificate renewal hearing

1 -- decision. (1) The board shall follow the provisions of
2 75-20-218 through 75-20-222 in making decisions on
3 certificate renewals.

4 (2) Within 60 days after submission of the recommended
5 decision by the hearing examiner, the board shall make
6 complete findings, issue an opinion, and render a decision
7 upon the record, either granting or denying the renewal
8 application or renewing the certificate with such changes in
9 the terms and conditions as the board considers appropriate.

10 (3) The board may not renew a certificate either as
11 proposed by the applicant or as modified by the board unless
12 it finds and determines the criteria in 75-20-301 and
13 75-20-503, considering any significant changes in need,
14 alternatives, technology, baseline environment, and
15 environmental impact.

16 NEW SECTION. Section 6. Codification instruction.
17 Sections 3 through 5 are intended to be codified as an
18 integral part of Title 75, chapter 20, and the provisions of
19 Title 75, chapter 20, apply to sections 3 through 5.

20 NEW SECTION. Section 7. Extension of authority. Any
21 existing authority of the board of natural resources and
22 conservation to make rules on the subject of the provisions
23 of this act is extended to the provisions of this act.

24 NEW SECTION. Section 8. Effective date. This act is
25 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. 189-85

Form BD-15

In compliance with a written request received January 23, 19 85, there is hereby submitted a Fiscal Note for House Bill 362 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 362 amends Section 75-20-302 and 75-20-303, MCA of the Montana Major Facility Siting Act to provide for the renewal of Certificates of Environmental Compatibility and Public Need.

ASSUMPTIONS:

No dollar estimates are presented as this bill will have no fiscal impact during the 1987 biennium. It will be at least 6 years before an applicant will apply for a renewal.

FISCAL IMPACT:

Revenues:
None

EXPENDITURES:

None

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

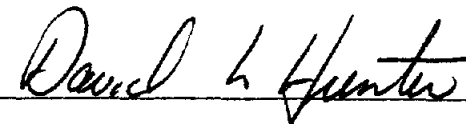
Not applicable.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill would generate revenue and expenditures if an applicant applied for a renewal of a certificate. The filing fee provided by the bill will offset the expenditures required to do the renewal studies. It will be at least six years before an applicant will apply for a renewal of a certificate. At this time it is not possible to project these amounts.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Not applicable.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 28, 1985

HB 362

APPROVED BY COMM. ON
NATURAL RESOURCES

1 STATEMENT OF INTENT

2 HOUSE BILL 362

3 House Natural Resources Committee

4

5 (1) It is the intent of the legislature that the board
6 of natural resources and conservation have the authority to
7 condition a certificate of environmental compatibility and
8 public need issued under the Montana Major Facility Siting
9 Act upon actual load growth reaching a specified level or on
10 the availability of other planned resources.

11 (2) It is the intent of the legislature that the grant
12 of authority to the board referred to in subsection (1) not
13 be construed to limit, alter, or otherwise affect the
14 authority of the Montana public service commission to
15 determine under 69-3-109 whether any facility is "actually
16 used and useful for the convenience of the public".

SECOND READING

HB 362

HOUSE BILL NO. 362

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BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RENEWAL OF CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED ISSUED UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-302 AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) FOR A FACILITY DEFINED IN 75-20-104(10)(A)(I), the board may condition a certificate upon actual load growth reaching a specified level within-a-specified-time or on availability of other PLANNED energy resources."

Section 2. 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.

(3) 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 and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

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1 agreement to comply with the requirements of this chapter
2 and the conditions of the certificate.

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4 certificate the following time limits ~~during~~ ~~which~~
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22 (c) The time limit ~~shall~~ MAY be extended for periods a
23 REASONABLE period of 2 years each upon a showing by the
24 applicant to the board that a good faith effort is being
25 undertaken to complete construction UNDER SUBSECTIONS

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16 alternatives, technology, baseline environment, or
17 environmental impact since issuance of the certificate,
18 considering the applicable criteria listed in 75-20-301 and
19 75-20-503.

20 (4) The departments of highways; commerce; fish,
21 wildlife, and parks; state lands; revenue; and public
22 service regulation shall report to the department
23 information relating to the impact of the proposed site on
24 each department's area of responsibility. The report may
25 include opinions as to the advisability of renewing the

1 certificate. The department shall allocate funds obtained
 2 from filing fees to the departments making reports to
 3 reimburse them for the cost of compiling information and
 4 issuing the required reports.

5 NEW SECTION. Section 5. Certificate renewal hearing
 6 -- decision. (1) The board shall follow the provisions of
 7 75-20-218 through 75-20-222 in making decisions on
 8 certificate renewals.

9 (2) Within 60 days after submission of the recommended
 10 decision by the hearing examiner, the board shall make
 11 complete findings, issue an opinion, and render a decision
 12 upon the record, either granting or denying the renewal
 13 application or renewing the certificate with such changes in
 14 the terms and conditions as the board considers appropriate.

15 (3) The board may not renew a certificate either as
 16 proposed by the applicant or as modified by the board unless
 17 it finds and determines the criteria in 75-20-301 and
 18 75-20-503, considering any significant changes in need,
 19 alternatives, technology, baseline environment, and
 20 environmental impact.

21 NEW SECTION. Section 6. Codification instruction.
 22 Sections 3 through 5 are intended to be codified as an
 23 integral part of Title 75, chapter 20, and the provisions of
 24 Title 75, chapter 20, apply to sections 3 through 5.

25 NEW SECTION. Section 7. Extension of authority. Any

1 existing authority of the board of natural resources and
 2 conservation to make rules on the subject of the provisions
 3 of this act is extended to the provisions of this act.

4 NEW SECTION. Section 8. Effective date. This act is
 5 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 362

3 House Natural Resources Committee

4

5 (1) It is the intent of the legislature that the board
6 of natural resources and conservation have the authority to
7 condition a certificate of environmental compatibility and
8 public need issued under the Montana Major Facility Siting
9 Act upon actual load growth reaching a specified level or on
10 the availability of other planned resources.

11 (2) It is the intent of the legislature that the grant
12 of authority to the board referred to in subsection (1) not
13 be construed to limit, alter, or otherwise affect the
14 authority of the Montana public service commission to
15 determine under 69-3-109 whether any facility is "actually
16 used and useful for the convenience of the public".



REFERENCE BILL
HB 362

HOUSE BILL NO. 362

INTRODUCED BY BARDANOUE, MARKS

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RENEWAL OF CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED ISSUED UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-302 AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) FOR A FACILITY DEFINED IN 75-20-104(10)(A)(I), the board may condition a certificate upon actual load growth reaching a specified level within-a-specified-time or on availability of other PLANNED energy resources."

Section 2. 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.

(3) 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 and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during-which-construction-of-the-facility-must-be-completed; and

(b) a statement signed by the applicant showing



1 agreement to comply with the requirements of this chapter
2 and the conditions of the certificate.

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

6 ~~(a)(i) For a facility as defined in (b) or (c) of~~
7 ~~75-20-104(10) that is more than 30 miles in length, the-time~~
8 ~~limit-is construction must be completed within 10 years.~~

9 ~~(b)(ii) For a facility as defined in (b) or (c) of~~
10 ~~75-20-104(10) that is 30 miles or less in length, the-time~~
11 ~~limit-is construction must be completed within 5 years.~~

12 ~~(iii) For a facility as defined in (a) of~~
13 ~~75-20-104(10), construction must begin within 6 years and~~
14 ~~continue with due diligence in accordance with the~~
15 ~~PRELIMINARY construction schedule PLANS established in the~~
16 ~~certificate.~~

17 ~~(b) Unless extended or renewed in accordance with~~
18 ~~subsection (4)(c) or [sections 3 through 5], a certificate~~
19 ~~lapses and is void if the facility is not constructed or if~~
20 ~~construction of the facility is not commenced within the~~
21 ~~time limits provided in this section.~~

22 (c) The time limit shall MAY be extended for periods a
23 REASONABLE period of-2-years each upon a showing by the
24 applicant to the board that a good faith effort is being
25 undertaken to complete construction UNDER SUBSECTIONS

1 (4)(A)(I) AND (4)(A)(II) OR TO BEGIN CONSTRUCTION UNDER
2 SUBSECTION (4)(A)(III). Under this subsection, a good faith
3 effort ~~to--complete--construction~~ includes the process of
4 acquiring any necessary state or federal permit or
5 certificate for the facility and the process of judicial
6 review of any such permit or certificate.

7 (5) The provisions of subsection (4) apply to any
8 facility for which a certificate has not been issued or for
9 which construction is yet to be commenced."

10 NEW SECTION. Section 3. Certificate renewal --
11 application -- contents -- filing fee. (1) Any certificate
12 holder for a facility as defined in 75-20-104(10)(a)(i) may
13 apply for renewal of a certificate prior to the certificate
14 lapsing.

15 (2) An applicant for a renewal of a certificate shall
16 file with the department and department of health a joint
17 application in such form as the board requires by rule.

18 (3) An application for renewal of a certificate must
19 include updated information on the matters listed in
20 75-20-211(1)(a) that have changed since the original
21 application and such other information as the board requires
22 by rule for certification. The matters listed in
23 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
24 locations must be updated only if the board determines that
25 within the certified location significant changes have

1 occurred to warrant a review of alternate locations.

2 (4) An application filed under subsection (1) must
3 comply with the provisions of 75-20-211(3) through (5).

4 (5) Except as provided in this subsection, the
5 applicant shall pay a filing fee to the department in
6 accordance with 75-20-215(2). The fee is in addition to any
7 previous filing fee paid for processing the original
8 application for a certificate pursuant to 75-20-215. The fee
9 may not exceed the following scale:

10 (a) 0.125% of any estimated cost up to \$300 million;
11 plus

12 (b) 0.063% of any estimated cost over \$300 million.

13 NEW SECTION. Section 4. Renewal study. (1) Upon
14 receipt of a completed application for renewal of a
15 certificate, the department shall evaluate the updated
16 information and any significant changes in need,
17 alternatives, technology, baseline environment, and the
18 environmental impacts of a facility that have taken place
19 since the original study performed in granting the
20 certificate, considering the applicable criteria listed in
21 75-20-301 and 75-20-503 and the original board findings and
22 certificate conditions.

23 (2) The department of health and the board of health,
24 within 10 months of acceptance of a complete renewal
25 application, shall complete the statutory duties established

1 in 75-20-216(3). A copy of any decision, opinion, order,
2 certification, or permit must be served on the department
3 and the board and must be used as part of their
4 decisionmaking process.

5 (3) Within 12 months following acceptance of a
6 complete application for renewal of a certificate, the
7 department shall make a report to the board. This report
8 must contain the department's studies, evaluations,
9 recommendations, and other pertinent documents resulting
10 from its study and evaluation and any AN updated
11 environmental impact statement or analysis pursuant to the
12 Montana Environmental Policy Act. The department's report
13 must be directed to the question of whether the original
14 board findings and conditions have been or need to be
15 altered as a result of any significant changes in need,
16 alternatives, technology, baseline environment, or
17 environmental impact since issuance of the certificate,
18 considering the applicable criteria listed in 75-20-301 and
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