

SENATE BILL NO. 348

2/07 Introduced
2/08 Referred to Natural Resources
2/20 Hearing
2/23 Minor Committee Report Not Adopted
2/23 Major Committee Report adopted
2/23 Adverse Committee Report
2/23 Bill Killed

1 *Senate* BILL NO. *348*
 2 INTRODUCED BY *Heating Carlmt Shaw Switzer*
 3 *Tweitt Hirsch* *Adly* *Subdover*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
 5 MAJOR FACILITY SITING ACT BY REDEFINING "UTILITY";
 6 SPECIFYING THAT A NONUTILITY IS NOT REQUIRED TO SHOW NEED
 7 FOR A PROPOSED FACILITY; ELIMINATING THE REQUIREMENT OF
 8 BASELINE STUDIES FOR ALTERNATIVE SITES; AMENDING SECTIONS
 9 75-20-102, 75-20-104, 75-20-211, 75-20-216, 75-20-301, AND
 10 75-20-304, MCA."

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

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

14 "75-20-102. Policy and legislative findings. (1) It is
 15 the constitutionally declared policy of this state to
 16 maintain and improve a clean and healthful environment for
 17 present and future generations, to protect the environmental
 18 life-support system from degradation and prevent
 19 unreasonable depletion and degradation of natural resources,
 20 and to provide for administration and enforcement to attain
 21 these objectives.

22 (2) The legislature finds that the construction of
 23 additional power or energy conversion facilities may be
 24 necessary to meet the increasing need for electricity,
 25 energy, and other products and that these facilities have an

1 effect on the environment, an impact on population
 2 concentration, and an effect on the welfare of the citizens
 3 of this state. Therefore, it is necessary to ensure that the
 4 location, construction, and operation of power and energy
 5 conversion facilities will produce minimal adverse effects
 6 on the environment and upon the citizens of this state by
 7 providing that a power or energy conversion facility may not
 8 be constructed or operated within this state without a
 9 certificate of--environmental-compatibility-and-public-need
 10 acquired pursuant to this chapter."

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

12 "75-20-104. Definitions. In this chapter, unless the
 13 context requires otherwise, the following definitions apply:

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

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

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



1 not include a facility.

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

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

6 (6) "Certificate" means the certificate of
7 environmental compatibility or, in the case of a utility,
8 the certificate of environmental compatibility and public
9 need issued by the board under this chapter that is required
10 for the construction or operation of a facility.

11 (7) "Commence to construct" means:

12 (a) any clearing of land, excavation, construction, or
13 other action that would affect the environment of the site
14 or route of a facility but does not mean changes needed for
15 temporary use of sites or routes for nonutility purposes or
16 uses in securing geological data, including necessary
17 borings to ascertain foundation conditions;

18 (b) the fracturing of underground formations by any
19 means if such activity is related to the possible future
20 development of a gasification facility or a facility
21 employing geothermal resources but does not include the
22 gathering of geological data by boring of test holes or
23 other underground exploration, investigation, or
24 experimentation;

25 (c) the commencement of eminent domain proceedings

1 under Title 70, chapter 30, for land or rights-of-way upon
2 or over which a facility may be constructed;

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

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

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

14 (10) "Facility" means:

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

23 (i) generating 50 megawatts of electricity or more or
24 any addition thereto (except pollution control facilities
25 approved by the department of health and environmental

1 sciences added to an existing plant) having an estimated
2 cost in excess of \$10 million;

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

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

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

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

14 (b) each electric transmission line and associated
15 facilities of a design capacity of more than 69 kilovolts,
16 except that the term does not include an electric
17 transmission line and associated facilities of a design
18 capacity of 230 kilovolts or less and 10 miles or less in
19 length;

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

25 (d) any use of geothermal resources, including the use

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

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

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

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

16 (13) "Utility" means any person ~~engaged in any aspect~~
17 ~~of the production, storage, sale, delivery, or furnishing of~~
18 ~~heat, electricity, gas, hydrocarbon products, or energy in~~
19 ~~any form for ultimate public use~~ furnishing energy and
20 subject to rate of return or rate regulation by a state or
21 federal regulatory body or protected from competition by a
22 guaranteed monopoly of service in a service area."

23 Section 3. 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) a description of reasonable alternate locations
 13 for the proposed facility, a general description of the
 14 comparative merits and detriments of each location
 15 submitted, and a statement of the reasons why the primary
 16 proposed location is best suited for the facility;

17 (v) baseline data for the primary site and a
 18 reconnaissance analysis of two reasonable alternate
 19 locations;

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

22 (vii) such other information as the applicant considers
 23 relevant or as the board and board of health by order or
 24 rule or the department and department of health by order or
 25 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 primarily 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

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

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

9 Section 4. Section 75-20-216, MCA, is amended to 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 shall within 1 year
10 following the date of acceptance of an application and the
11 board of health or department of health, if applicable,
12 within an additional 6 months issue any decision, opinion,
13 order, certification, or permit required under the laws
14 administered by the department of health or the board of
15 health and this chapter. The department of health and the
16 board of health shall determine compliance with all
17 standards, permit requirements, and implementation plans
18 under their jurisdiction for the ~~primary--and--reasonable~~
19 ~~alternate--locations~~ proposed 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). The decision,
 6 opinion, order, certification, or permit of the department
 7 of health or the board of health satisfies the review
 8 requirements by those agencies and shall be acceptable in
 9 lieu of an environmental impact statement under the Montana
 10 Environmental Policy Act. A copy of the decision, opinion,
 11 order, certification, or permit shall be served upon the
 12 department and the board ~~and shall be utilized as part of~~
 13 ~~their final site selection process.~~ Prior to the issuance of
 14 a preliminary decision by the department of health and
 15 pursuant to rules adopted by the board of health, the
 16 department of health shall provide an opportunity for public
 17 review and comment.

18 (4) Within 22 months following acceptance of an
 19 application for a facility as defined in (a) and (d) of
 20 75-20-104(10) and for a facility as defined in (b) and (c)
 21 of 75-20-104(10) which is more than 30 miles in length and
 22 within 1 year for a facility as defined in (b) and (c) of
 23 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 prepared pursuant to the Montana
 4 Environmental Policy Act, if any. If the application is for
 5 a combination of two or more facilities, the department
 6 shall make its report to the board within the greater of the
 7 lengths of time provided for in this subsection for either
 8 of the facilities.

9 (5) The departments of highways; 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 5. Section 75-20-301, MCA, is amended to read:
 20 "75-20-301. Decision of board -- findings necessary
 21 for certification. (1) Within 60 days after submission of
 22 the recommended decision by the hearing examiner, the board
 23 shall make complete findings, issue an opinion, and render a
 24 decision upon the record, either granting or denying the
 25 application as filed or granting it upon such terms,

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

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

7 (a) the basis of the need for the facility, if it is a
8 facility proposed by a utility;

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

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

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

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

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

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

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

25 (f) that the location of the facility as proposed

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

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

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

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

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

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

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

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

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

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

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

9 Section 6. Section 75-20-304, MCA, is amended to read:

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

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

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

4 (3) The board shall waive compliance with the
5 requirements of subsections (2)(c), (3)(b), and (3)(c) of
6 75-20-301 and 75-20-501(5) and the requirements of
7 subsections (1)(a)(iv) and (v) of 75-20-2117--~~75-20-216~~~~(3)~~~~7~~
8 and 75-20-303(3)(a)(iv) relating to consideration of
9 alternative sites if the applicant makes a clear and
10 convincing showing to the board at a public hearing that:

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

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

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

22 (d) the proposed facility will have a beneficial
23 effect on the economy of the county in which the facility is
24 proposed to be located.

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

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

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

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

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

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.

-End-