

SB 233 INTRODUCED BY KEATING, NATHE, DEVLIN
AMENDS THE MAJOR FACILITY SITING ACT BY REDEFINING
UTILITY

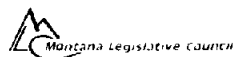
1/27 INTRODUCED
1/27 REFERRED TO NATURAL RESOURCES
2/16 HEARING
2/19 DIED IN COMMITTEE ON TIE VOTE

1 *Senate* BILL NO. *233*
 2 INTRODUCED BY *Seating*
 3 *NATHAN*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MAJOR
 5 FACILITY SITING ACT BY REDEFINING UTILITY AND THEREBY
 6 CLARIFYING THAT A NONUTILITY IS NOT REQUIRED TO DEMONSTRATE
 7 THE NEED FOR A PROPOSED FACILITY; AMENDING SECTIONS
 8 75-20-102, 75-20-104, 75-20-201, 75-20-211, AND 75-20-301,
 9 MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 75-20-102, MCA, is amended to read:
 13 "75-20-102. Policy and legislative findings. (1) It is
 14 the constitutionally declared policy of this state to
 15 maintain and improve a clean and healthful environment for
 16 present and future generations, to protect the environmental
 17 life-support system from degradation and prevent
 18 unreasonable depletion and degradation of natural resources,
 19 and to provide for administration and enforcement to attain
 20 these objectives.
 21 (2) The legislature finds that the construction of
 22 additional power or energy conversion facilities may be
 23 necessary to meet the increasing need for electricity,
 24 energy, and other products and that these facilities have an
 25 effect on the environment, an impact on population

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

10 Section 2. Section 75-20-104, MCA, is amended to read:
 11 "75-20-104. Definitions. In this chapter, unless the
 12 context requires otherwise, the following definitions apply:
 13 (1) "Addition thereto" means the installation of new
 14 machinery and equipment which would significantly change the
 15 conditions under which the facility is operated.
 16 (2) "Application" means an application for a
 17 certificate submitted in accordance with this chapter and
 18 the rules adopted hereunder.
 19 (3) "Associated facilities" includes but is not
 20 limited to transportation links of any kind, aqueducts,
 21 diversion dams, pipelines, transmission substations, storage
 22 ponds, reservoirs, and any other device or equipment
 23 associated with the production or delivery of the energy
 24 form or product produced by a facility, except that the term
 25 does not include a facility or a natural gas or crude oil



1 gathering line 17 inches or less in inside diameter.

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 those facilities subject to The Montana Strip and
17 Underground Mine Reclamation Act, each plant, unit, or other
18 facility and associated facilities designed for or capable
19 of:

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

25 (ii) producing 25 million cubic feet or more of gas

1 derived from coal per day or any addition thereto having an
2 estimated cost in excess of \$10 million;

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

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

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

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

17 (c) each pipeline, whether partially or wholly within
18 the state, greater than 17 inches in inside diameter and 30
19 miles in length, and associated facilities;

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

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

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

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

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

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

20 "75-20-201. Certificate required -- operation in
21 conformance -- certificate for nuclear facility --
22 applicability to federal facilities. (1) A person may not
23 commence to construct a facility in the state without first
24 applying for and obtaining a certificate ~~of environmental~~
25 ~~compatibility-and-public-need~~ issued with respect to the

1 facility by the board.

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

6 (3) A certificate may only be issued pursuant to this
7 chapter.

8 (4) If the board decides to issue a certificate for a
9 nuclear facility, it shall report such recommendation to the
10 applicant and may not issue the certificate until such
11 recommendation is approved by a majority of the voters in a
12 statewide election called by initiative or referendum
13 according to the laws of this state.

14 (5) This chapter applies, to the fullest extent
15 allowed by federal law, to all federal facilities and to all
16 facilities over which an agency of the federal government
17 has jurisdiction."

18 Section 4. Section 75-20-211, MCA, is amended to read:

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

1 following information:

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

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

6 (iii) a statement explaining the need for the facility
7 if proposed by a utility;

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

13 (v) baseline data for the primary and reasonable
14 alternate locations;

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

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

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

25 (2) An application may consist of an application for

1 two or more facilities in combination which are physically
2 and directly attached to each other and are operationally a
3 single operating entity.

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

- 13 (a) environmental quality council;
- 14 (b) department of public service regulation;
- 15 (c) department of fish, wildlife, and parks;
- 16 (d) department of state lands;
- 17 (e) department of commerce;
- 18 (f) department of highways;
- 19 (g) department of revenue.

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

23 (5) An application shall also be accompanied by proof
24 that public notice thereof was given to persons residing in
25 the area or alternative areas in which any portion of the

1 proposed facility may be located, by publication of a
2 summary of the application in those newspapers that will
3 substantially inform those persons of the application."

4 Section 5. Section 75-20-301, MCA, is amended to read:

5 "75-20-301. Decision of board -- findings necessary
6 for certification. (1) Within 60 days after submission of
7 the recommended decision by the hearing examiner, the board
8 shall make complete findings, issue an opinion, and render a
9 decision upon the record, either granting or denying the
10 application as filed or granting it upon such terms,
11 conditions, or modifications of the construction, operation,
12 or maintenance of the facility as the board considers
13 appropriate.

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

17 (a) the basis of the need for the facility if proposed
18 by a utility;

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

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

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

25 (e) in the case of an electric, gas, or liquid

1 transmission line or aqueduct:

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

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

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

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

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

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

24 (i) that the use of public lands for location of the
25 facility was evaluated and public lands were selected

1 whenever their use is as economically practicable as the use
2 of private lands and compatible with the environmental
3 criteria listed in 75-20-503.

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

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

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

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

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

15 ~~(e) any other factors that it considers relevant.~~

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

19 NEW SECTION. Section 6. Extension of authority. Any
20 existing authority of the board of natural resources and
21 conservation to make rules on the subject of the provisions
22 of this act is extended to the provisions of this act.

-End-