

IN THE SENATE

MARCH 23, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

MARCH 24, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 *Senate* BILL NO. *292*
 2 INTRODUCED BY *Feating* *Sybert*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA MAJOR FACILITY SITING ACT; DEFINING COST;
 6 ELIMINATING BASELINE STUDIES OF ALTERNATIVE SITES FROM
 7 CONSIDERATION; REDUCING THE TIME ALLOWED FOR STUDIES AND
 8 DECISIONMAKING; AMENDING SECTIONS 75-20-104, 75-20-105,
 9 75-20-202, 75-20-205, 75-20-211, 75-20-213, 75-20-216,
 10 75-20-217, 75-20-219, 75-20-220, 75-20-222, 75-20-225
 11 THROUGH 75-20-227, 75-20-301 THROUGH 75-20-304, 75-20-402,
 12 75-20-403, 75-20-405, 75-20-501 THROUGH 75-20-503,
 13 75-20-1202, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE
 14 EFFECTIVE DATE."
 15

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

17 Section 1. 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.

1 (3) "Associated facilities" includes but is not
 2 limited to transportation links of any kind, aqueducts,
 3 diversion dams, pipelines, transmission substations, storage
 4 ponds, reservoirs, and any other device or equipment
 5 associated with the production or delivery of the energy
 6 form or product produced by a facility located in Montana,
 7 except that the term does not include a facility or a
 8 natural gas or crude oil gathering line 17 inches or less in
 9 inside diameter.

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

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

14 (6) "Certificate" means the certificate of
 15 environmental compatibility and public need issued by the
 16 board under this chapter that is required for the
 17 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 ~~(11)(b)~~ or
 12 (11)(c), including upgrading to a design capacity covered by
 13 subsection ~~(10)(b)~~ (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 a facility or associated
 18 facility located in Montana.

19 ~~(9)~~ (9) "Department" means the department of natural
 20 resources and conservation provided for in Title 2, chapter
 21 15, part 33.

22 ~~(9)~~ (10) "Department of health" means the department of
 23 health and environmental sciences provided for in Title 2,
 24 chapter 15, part 21.

25 ~~(10)~~ (11) "Facility" means:

1 (a) except for crude oil and natural gas refineries
 2 and those facilities subject to The Montana Strip and
 3 Underground Mine Reclamation Act, each plant, unit, or other
 4 facility and associated facilities designed for or capable
 5 of:

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

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

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

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

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

23 (b) each electric transmission line and associated
 24 facilities of a design capacity of more than 69 kilovolts,
 25 except that the term does not include an electric

1 transmission line and associated facilities of a design
2 capacity of 230 kilovolts or less and 10 miles or less in
3 length;

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

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

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

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

18 ~~(13)~~ "Transmission substation" means any structure,
19 device, or equipment assemblage, commonly located and
20 designed for voltage regulation, circuit protection, or
21 switching necessary for the construction or operation of a
22 proposed transmission line.

23 ~~(14)~~ "Utility" means any person engaged in any
24 aspect of the production, storage, sale, delivery, or
25 furnishing of heat, electricity, gas, hydrocarbon products,

1 or energy in any form for ultimate public use."

2 Section 2. Section 75-20-105, MCA, is amended to read:

3 "75-20-105. Adoption of rules. The board may adopt
4 rules implementing the provisions of this chapter, ~~including~~
5 ~~but not limited to:~~

6 ~~(1) rules governing the form and content of~~
7 ~~applications;~~

8 ~~(2) rules further defining the terms used in this~~
9 ~~chapter;~~

10 ~~(3) rules governing the form and content of long-range~~
11 ~~plans;~~

12 ~~(4) any other rules the board considers necessary to~~
13 ~~accomplish the purposes and objectives of this chapter."~~

14 Section 3. Section 75-20-202, MCA, is amended to read:

15 "75-20-202. Exemptions. (1) A certificate is not
16 required under this chapter for a facility under diligent
17 onsite physical construction or in operation on January 1,
18 1973.

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

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

23 (b) (i) is unlikely to have a significant
24 environmental impact by reason of length, size, location,
25 available space or right-of-way, or construction methods; or

1 (ii) utilizes coal, wood, biomass, grain, wind, or sun
2 as a fuel source and the technology of which will result in
3 greater efficiency, promote energy conservation, and promote
4 greater system reliability than the existing facility.

5 (3) A person proposing to construct an exempt facility
6 shall pay to the department reasonable costs, if any,
7 incurred by the department in processing the exemption.

8 (4) This chapter does not apply to a facility defined
9 in 75-20-104~~(i)~~~~(c)~~(1)(c) that has been designated by the
10 governor for environmental review by an executive agency of
11 the state for the purpose of complying with Title 75,
12 chapter 1, pursuant to Executive Order 4-81 and prior to
13 July 1, 1985."

14 Section 4. Section 75-20-205, MCA, is amended to read:

15 "75-20-205. Centerline location. (1) For all
16 facilities defined in 75-20-104~~(i)~~~~(b)~~(1)(b) and
17 ~~(i)~~~~(c)~~(1)(c) and associated facilities certified under
18 this chapter, the board shall condition the certificate upon
19 board approval of a final centerline location.

20 (2) The final centerline location must be determined
21 in a noncontested case proceeding before the board after the
22 submission of a centerline location report by the
23 department.

24 (3) The department shall consult with the certificate
25 holder and the affected landowners prior to making its

1 report.

2 (4) The department's report must be prepared
3 considering the criteria set forth in 75-20-301 and
4 75-20-503 and the findings of fact and conclusions of law
5 set out in the board decision.

6 (5) The department report may be completed on segments
7 of a certified facility as is convenient to the certificate
8 holder.

9 (6) The certificate holder shall initiate the final
10 centerline location approval process by submitting a
11 proposed centerline location plan to the department. The
12 certificate holder shall pay to the department the actual
13 costs incurred in processing a final centerline location not
14 to exceed 25% of the filing fee paid under 75-20-215."

15 Section 5. Section 75-20-211, MCA, is amended to read:

16 "75-20-211. Application -- filing and contents --
17 proof of service and notice. (1) (a) An applicant shall file
18 with the department and department of health a joint
19 application for a certificate under this chapter and for the
20 permits required under the laws administered by the
21 department of health and the board of health in such form as
22 the board requires under applicable rules, containing the
23 following information:

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

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

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

4 (iv) for facilities defined in 75-20-104(1)(b) and
5 (1)(c), a description of reasonable alternate locations for
6 the---proposed---facility, a general description of the
7 comparative merits and detriments of each location
8 submitted, and a statement of the reasons why the primary
9 proposed location is best suited for the facility;

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

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

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

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

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

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

10 (a) environmental quality council;

11 (b) department of public service regulation;

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

13 (d) department of state lands;

14 (e) department of commerce;

15 (f) department of highways;

16 (g) department of revenue.

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

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

1 the application."

2 Section 6. Section 75-20-213, MCA, is amended to read:

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

9 (2) An application may be amended by an applicant any
10 time prior to the department's recommendation. If the
11 proposed amendment is such that it prevents the department,
12 the department of health, or the agencies listed in
13 75-20-216(5) from carrying out their duties and
14 responsibilities under this chapter, the department may
15 require such additional filing fees as ~~the--department~~
16 determines it demonstrates to the applicant as necessary, ~~or~~
17 ~~the-department-may-require-a-new-application-and-filing-fee.~~

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

1 Section 7. Section 75-20-216, MCA, is amended to read:

2 "75-20-216. Study, evaluation, and report on proposed
3 facility -- assistance by other agencies. (1) After receipt
4 of an application, the department and department of health
5 shall within 90 days notify the applicant in writing that:

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

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

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

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

1 acceptable in lieu of an environmental impact statement
 2 under the Montana Environmental Policy Act. A copy of the
 3 decision, opinion, order, certification, or permit shall be
 4 served upon the department and the board ~~and shall be~~
 5 ~~utilized as part of their final site selection process.~~
 6 Prior to the issuance of a preliminary decision by the
 7 department of health and pursuant to rules adopted by the
 8 board of health, the department of health shall provide an
 9 opportunity for public review and comment.

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

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

11 Section 8. Section 75-20-217, MCA, is amended to read:
 12 "75-20-217. Voiding an application. (1) Upon request,
 13 an applicant is entitled to notice and a hearing as provided
 14 in 2-4-601 and 2-4-604 if the department proposes to void an
 15 application.

16 (2) An Following the hearing provided for in
 17 subsection (1), an application may be voided by the
 18 department for:

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

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

25 (c) failure to deposit the filing fee as provided

1 in 75-20-215."

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

3 "75-20-219. Amendments to a certificate. (1) Within 30
 4 days after notice of an amendment to a certificate is given
 5 as set forth in 75-20-213(1), including notice to all active
 6 parties to the original proceeding, the department shall
 7 determine whether the proposed change in the facility would
 8 result in any a material increase in any environmental
 9 impact of the facility or a substantial change in the
 10 location of ~~all or a portion~~ of the facility ~~other than as~~
 11 ~~provided in the alternates~~ as set forth in the original
 12 application. If the department determines that the proposed
 13 change would result in any a material increase in any
 14 environmental impact of the facility or a substantial change
 15 in the location of all or a portion of the facility, the
 16 board shall hold a hearing in the same manner as a hearing
 17 is held on an application for a certificate. After hearing,
 18 the board shall grant, deny, or modify the amendment with
 19 such conditions as it deems appropriate.

20 (2) In those cases where the department determines
 21 that the proposed change in the facility would not result in
 22 any a material increase in any environmental impact or would
 23 not be a substantial change in the location of ~~all or a~~
 24 ~~portion~~ of the facility, the board shall automatically grant
 25 the amendment either as applied for or upon such terms or

1 conditions as the board considers appropriate unless the
2 department's determination is appealed to the board within
3 15 days after notice of the department's determination is
4 given.

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

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

25 (5) If an amendment is required to a certificate which

1 would affect, amend, alter or modify a decision, opinion,
2 order, certification, or permit issued by the department of
3 health or board of health, such amendment must be processed
4 under the applicable statutes administered by the department
5 of health or board of health."

6 Section 10. Section 75-20-220, MCA, is amended to
7 read:

8 "75-20-220. Hearing examiner -- restrictions --
9 duties. (1) If the board appoints a hearing examiner to
10 conduct any certification proceedings under this chapter,
11 the hearing examiner may not be a member of the board, an
12 employee of the department, or a member or employee of the
13 department of health or board of health. A hearing examiner,
14 if any, shall be appointed by the board within 20 days after
15 the department's report has been filed with the board. If a
16 hearing is held before the board of health or the department
17 of health, the board and the board of health or the
18 department of health shall mutually agree on the appointment
19 of a hearing examiner to preside at both hearings.

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

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

25 (4) The prehearing conference shall be directed toward

1 a determination of the issues presented by the application,
 2 the department's report, and an identification of the
 3 witnesses and documentary exhibits to be presented by the
 4 active parties who intend to participate in the hearing.

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

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

19 (7) Public witnesses and other interested public
 20 parties may appear and present oral testimony at the hearing
 21 or submit written testimony to the hearing examiner at the
 22 time of their appearance. These witnesses are subject to
 23 cross-examination.

24 (8) The hearing examiner shall issue a prehearing
 25 order specifying the issues of fact and of law, identifying

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

11 (9) At the conclusion of the hearing, the hearing
 12 examiner shall declare the hearing closed and shall, within
 13 60 days of that date, prepare and submit to the board and in
 14 the case of a conjunctive hearing, within 90 days to the
 15 board and the board of health or department of health
 16 proposed findings of fact, conclusions of law, and a
 17 recommended decision.

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

25 (11) The board or hearing examiner may waive all or a

1 portion of the procedures set forth in subsections (2)
 2 through (8) of this section to expedite the hearing for a
 3 facility when the department has recommended approval of a
 4 facility and no objections have been filed."

5 Section 11. Section 75-20-222, MCA, is amended to
 6 read:

7 "75-20-222. Record of hearing -- procedure -- rules of
 8 evidence -- burden of proof. (1) Any studies,
 9 investigations, reports, or other documentary evidence,
 10 including those prepared by the department, which any party
 11 wishes the board to consider or which the board itself
 12 expects to utilize or rely upon shall be made a part of the
 13 record.

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

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

20 (4) All proceedings under this chapter are governed by
 21 the procedures set forth in this chapter, the procedural
 22 rules adopted by the board, and the Montana Rules of
 23 Evidence unless one or more rules of evidence are waived by
 24 the hearing examiner upon a showing of good cause by one or
 25 more of the parties to the hearing. No other rules of

1 procedure or evidence shall apply except that the contested
 2 case procedures of the Montana Administrative Procedure Act
 3 shall apply if not in conflict with the procedures set forth
 4 in this chapter ~~or the procedural rules adopted by the~~
 5 ~~board."~~

6 Section 12. Section 75-20-225, MCA, is amended to
 7 read:

8 "75-20-225. Certificate renewal -- application --
 9 contents -- filing fee. (1) Any certificate holder for a
 10 facility as defined in 75-20-104~~(a)(i)(ii)~~(11)(a)(i) may
 11 apply for renewal of a certificate prior to the certificate
 12 lapsing.

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

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

25 (4) An application filed under subsection (1) must

1 comply with the provisions of 75-20-211(3) through (5).

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

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

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

11 Section 13. Section 75-20-226, MCA, is amended to
12 read:

13 "75-20-226. Renewal study. (1) Upon receipt of a
14 completed application for renewal of a certificate, the
15 department shall evaluate the updated information and any
16 significant changes, as applicable, in need, alternatives,
17 technology, baseline environment, and the environmental
18 impacts of a facility that have taken place since the
19 original study performed in granting the certificate,
20 considering the applicable criteria listed in 75-20-301 and
21 75-20-503 and the original board findings and certificate
22 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 an updated environmental
11 impact statement or analysis, if any, 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, as
16 applicable, in need, alternatives, technology, baseline
17 environment, or environmental impact since issuance of the
18 certificate, considering the applicable criteria listed in
19 75-20-301 and 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 Section 14. Section 75-20-227, MCA, is amended to
6 read:

7 "75-20-227. Certificate renewal hearing -- decision.

8 (1) The board shall follow the provisions of 75-20-218
9 through 75-20-222 in making decisions on certificate
10 renewals.

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

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

23 Section 15. Section 75-20-301, MCA, is amended to
24 read:

25 "75-20-301. Decision of board -- findings necessary

1 for certification. (1) Within 60 days after submission of
2 the recommended decision by the hearing examiner, the board
3 shall make complete findings, issue an opinion, and render a
4 decision upon the record, either granting or denying the
5 application as filed or granting it upon such terms,
6 conditions, or modifications of the construction, operation,
7 or maintenance of the facility as the board considers
8 appropriate.

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

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

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

14 (c) that the facility represents the minimum adverse
15 environmental impact, considering the state of available
16 technology and, for facilities defined in 75-20-104(1)(b)
17 and (1)(c), the nature and--economics of the various
18 alternatives alternate locations;

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

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

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

24 (ii) that the facility is consistent with regional
25 plans for expansion of the appropriate grid of the utility

1 systems serving the state and interconnected utility
2 systems; and

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

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

14 (g) that the facility will serve the public interest,
15 convenience, and necessity;

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

19 (i) for facilities defined in 75-20-104(11)(b) and
20 (11)(c), that the use of public lands for location of the
21 facility was evaluated and public lands were selected
22 whenever their use is as economically practicable as the use
23 of private lands and compatible with the environmental
24 criteria listed in 75-20-503.

25 (3) In determining that the facility will serve the

1 public interest, convenience, and necessity under subsection
2 (2)(g) of this section, the board shall consider:

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

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

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

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

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

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

15 Section 16. Section 75-20-302, MCA, is amended to
16 read:

17 "75-20-302. Conditions imposed. (1) If the board
18 determines that the location of all or a part of the a
19 proposed facility defined in 75-20-104(11)(b) or (11)(c)
20 should be modified, it may condition its certificate upon
21 such modification, provided that the persons residing in the
22 area affected by the modification have been given reasonable
23 notice of the modification.

24 (2) In making its findings under 75-20-301(2)(a) for a
25 facility defined in 75-20-104~~(10)(a)(i)~~(11)(a)(i), the board

1 may condition a certificate upon actual load growth reaching
2 a specified level or on availability of other planned energy
3 resources."

4 Section 17. Section 75-20-303, MCA, is amended to
5 read:

6 "75-20-303. Opinion issued with decision -- contents.
7 (1) In rendering a decision on an application for a
8 certificate, the board shall issue an opinion, stating its
9 reasons for the action taken.

10 ~~{2}--If--the--board--has--found--that--any--regional--or--local
11 law--or--regulation--which--would--be--otherwise--applicable--to
12 unreasonably--restrictive--pursuant--to--75-20-303{2}{f},--it
13 shall--state--in--its--opinion--the--reasons--therefor--~~

14 {3}{2} Any certificate issued by the board shall
15 include the following:

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

19 (i) the environmental impact of the proposed facility;
20 (ii) any adverse environmental effects which cannot be
21 avoided by issuance of the certificate;

22 (iii) problems and objections raised by other federal
23 and state agencies and interested groups; and

24 (iv) alternatives to the proposed facility;

25 (b) a plan for monitoring environmental effects of the

1 proposed facility;

2 (c) a plan for monitoring the certified facility site
3 between the time of certification and completion of
4 construction;

5 (d) a time limit as provided in subsection {4} {3};
6 and

7 (e) a statement signed by the applicant showing
8 agreement to comply with the requirements of this chapter
9 and the conditions of the certificate.

10 {4}{3} (a) The board shall issue as part of the
11 certificate the following time limits:

12 (i) For a facility as defined in {b}--or--{c}--of
13 75-20-104{10}{11}(b) or (11)(c) that is more than 30 miles
14 in length, construction must be completed within 10 years.

15 (ii) For a facility as defined in {b}---of
16 75-20-104{10}{11}(b) that is 30 miles or less in length,
17 construction must be completed within 5 years.

18 (iii) For a facility as defined in {a}--of 75-20-104{10}
19 {11}(a), construction must begin within 6 years and continue
20 with due diligence in accordance with preliminary
21 construction plans established in the certificate.

22 (b) Unless extended or renewed in accordance with
23 subsection {4}{c} {3}(c) or 75-20-225 through 75-20-227, a
24 certificate lapses and is void if the facility is not
25 constructed or if construction of the facility is not

1 commenced within the time limits provided in this section.

2 (c) The time limit may be extended for a reasonable
3 period upon a showing by the applicant to the board that a
4 good faith effort is being undertaken to complete
5 construction under ~~subsections (4)(a)(i) and (4)(a)(ii)~~ subsection
6 (3)(a)(i) ~~and (4)(a)(iii)~~ or (3)(a)(ii) or to begin
7 construction under subsection ~~(4)(a)(iii)~~ (3)(a)(iii). Under
8 this subsection, a good faith effort includes the process of
9 acquiring any necessary state or federal permit or
10 certificate for the facility and the process of judicial
11 review of any such permit or certificate.

12 ~~(5)(4)~~ The provisions of subsection ~~(4)~~ (3) apply to
13 any facility for which a certificate has not been issued or
14 for which construction is yet to be commenced."

15 Section 18. Section 75-20-304, MCA, is amended to
16 read:

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

1 (2) The board may waive compliance with any of the
2 provisions of this chapter upon receipt of notice by a
3 ~~utility or person~~ subject to this chapter that a facility or
4 associated facility has been damaged or destroyed as a
5 result of fire, flood, or other natural disaster or as the
6 result of insurrection, war, or other civil disorder and
7 there exists an immediate need for construction of a new
8 facility or associated facility or the relocation of a
9 previously existing facility or associated facility in order
10 to promote the public welfare.

11 (3) The board shall waive compliance with the
12 requirements of subsections (2)(c), (3)(b), and (3)(c) of
13 75-20-301, and 75-20-501(5), and ~~the requirements of~~
14 ~~subsections (1)(a)(iv) and (v) of~~ 75-20-211(1)(a)(iv),
15 75-20-216(3), ~~and 75-20-303(3)(a)(iv)~~ relating to
16 consideration of alternative sites if the applicant makes a
17 clear and convincing showing to the board at a public
18 hearing that:

19 (a) a proposed facility will be constructed in a
20 county where a single employer within the county has
21 permanently curtailed or ceased operations causing a loss of
22 250 or more permanent jobs within 2 years at the employer's
23 operations within the preceding 10-year period;

24 (b) the county and municipal governing bodies in whose
25 jurisdiction the facility is proposed to be located support

1 by resolution such a waiver;

2 (c) the proposed facility will be constructed within a
3 15-mile radius of the operations that have ceased or been
4 curtailed; and

5 (d) the proposed facility will have a beneficial
6 effect on the economy of the county in which the facility is
7 proposed to be located.

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

13 (5) The waiver provided for in subsection (3) does not
14 apply to consideration of alternatives or minimum adverse
15 environmental impact for a facility defined in ~~subsections~~
16 ~~{10}{b}~~ subsection (b), (c), (d), or (e) of 75-20-104(11),
17 for an associated facility defined in ~~subsection--{3}--of~~
18 75-20-104(3), or for any portion of or process in a facility
19 defined in ~~subsection--{10}{a}--of~~ 75-20-104(11)(a) to the
20 extent that the process or portion of the facility is not
21 subject to a permit issued by the department of health or
22 board of health.

23 (6) The applicant shall pay all expenses required to
24 process and conduct a hearing on a waiver request under
25 subsection (3). However, any payments made under this

1 subsection shall be credited toward the fee paid under
2 75-20-215 to the extent the data or evidence presented at
3 the hearing or the decision of the board under subsection
4 (3) can be used in making a certification decision under
5 this chapter.

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

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

11 "75-20-402. Monitoring. The board, the department, the
12 department of health, and the board of health shall monitor
13 the operations of all certificated facilities for assuring
14 continuing compliance with this chapter and certificates
15 issued hereunder and for discovering and preventing
16 noncompliance with this chapter and the certificates. The
17 applicant shall pay all expenses related to the monitoring
18 plan established in ~~subsection--{3}{b}---or---{3}{c}---of~~
19 75-20-303(2)(b) or (2)(c) to the extent federal funds
20 available for the facility, as determined by the department
21 of health, have not been provided for such purposes."

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

24 "75-20-403. Revocation or suspension of certificate.
25 Following notice and an opportunity for a hearing, a

1 certificate may be revoked or suspended by the board:

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

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

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

11 Section 21. Section 75-20-405, MCA, is amended to
12 read:

13 "75-20-405. Action to recover damages to water supply.
14 An owner of an interest in real property who obtains all or
15 part of his supply of water for domestic, agricultural,
16 industrial, or other legitimate beneficial use from a
17 surface or underground source may sue a person to recover
18 damages for contamination, diminution, or interruption of
19 the water supply proximately resulting from the operation of
20 a facility. The remedies enumerated in this section do not
21 exclude the use of any other remedy which may be available
22 under the laws of the state."

23 Section 22. Section 75-20-501, MCA, is amended to
24 read:

25 "75-20-501. Annual long-range plan submitted --

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

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

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

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

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

23 (d) projections of the demand for the service rendered
24 by the a utility ~~or-person~~ and explanation of the basis for
25 those projections and a description of the manner and extent

1 to which the proposed facilities will meet the projected
2 demand; and

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

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

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

1 (5) No person may file an application for a facility
2 unless the facility ~~had-been~~ was adequately identified in a
3 long-range plan at least 2 years prior to acceptance of an
4 application by the department, except for electric
5 transmission lines of a design capacity of 230 kilovolts or
6 less."

7 Section 23. 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 the 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 24. 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,

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

- 5 (1) ~~energy needs; requirements;~~
 6 ~~(a) growth in demand and projections of need;~~
 7 ~~(b) availability and desirability of alternative~~
 8 ~~sources of energy;~~
 9 ~~(c) availability and desirability of alternative~~
 10 ~~sources of energy in lieu of the proposed facility;~~
 11 ~~(d) promotional activities of the utility which may~~
 12 ~~have given rise to the need for this facility;~~
 13 ~~(e) socially beneficial uses of the output of this~~
 14 ~~facility, including its uses to protect or enhance~~
 15 ~~environmental quality;~~
 16 ~~(f) conservation activities which could reduce the~~
 17 ~~need for more energy;~~
 18 ~~(g) research activities of the utility of new~~
 19 ~~technology available to it which might minimize~~
 20 ~~environmental impact;~~
 21 (2) land use impacts:
 22 (a) area of land required and ultimate use;
 23 (b) consistency with areawide state and regional land
 24 use plans;
 25 (c) consistency with existing and projected nearby

- 1 land use;
 2 (d) alternative uses of the site;
 3 (e) impact on population already in the area,
 4 population attracted by construction or operation of the
 5 facility itself;
 6 (f) impact of availability of energy from this
 7 facility on growth patterns and population dispersal;
 8 (g) geologic suitability of the site or route;
 9 (h) seismologic characteristics;
 10 (i) construction practices;
 11 (j) extent of erosion, scouring, wasting of land, both
 12 at site and as a result of fossil fuel demands of the
 13 facility;
 14 (k) corridor design and construction precautions for
 15 transmission lines or aqueducts;
 16 (l) scenic impacts;
 17 (m) effects on natural systems, wildlife, plant life;
 18 (n) impacts on important historic architectural,
 19 archeological, and cultural areas and features;
 20 (o) extent of recreation opportunities and related
 21 compatible uses;
 22 (p) public recreation plan for the project;
 23 (q) public facilities and accommodation;
 24 (r) opportunities for joint use with energy-intensive
 25 industries or other activities to utilize the waste heat

1 from facilities;

2 (s) for facilities defined in 75-20-104(11)(b) and
 3 (11)(c), opportunities for using public lands for location
 4 of facilities whenever as economically practicable as the
 5 use 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;

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

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

5 (6) radiation impacts:

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

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

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

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

13 (7) noise impacts:

14 (a) construction period levels;

15 (b) operational levels;

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

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

19 Section 25. Section 75-20-1202, MCA, is amended to
20 read:

21 "75-20-1202. Definitions. As used in this part and
22 75-20-201 through 75-20-203, the following definitions
23 apply:

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

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

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

5 (iii) storing or disposing of radioactive wastes or
6 materials from a nuclear facility.

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

11 (2) "Facility", as defined in 75-20-104~~(10)~~(11), is
12 further defined to include any nuclear facility as defined
13 in subsection (1)(a) of this section."

14 Section 26. Section 75-20-1205, MCA, is amended to
15 read:

16 "75-20-1205. Emergency approval authority invalid for
17 nuclear facilities. Notwithstanding the provisions of
18 ~~subsections--(2)--and-(3)--of~~ 75-20-304(2), the board may not
19 waive compliance with any of the provisions of this part or
20 75-20-201 through 75-20-203 relating to certification of a
21 nuclear facility."

22 NEW SECTION. Section 27. Extension of authority. Any
23 existing authority of the board of natural resources and
24 conservation, the board of health and environmental
25 sciences, and the department of health and environmental

1 sciences to make rules on the subject of the provisions of
2 this act is extended to the provisions of this act.

3 NEW SECTION. Section 28. Effective date. This act is
4 effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 292

INTRODUCED BY KEATING, GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST, ELIMINATING BASELINE STUDIES OF ALTERNATIVE SITES FROM CONSIDERATION; REDUCING THE TIME ALLOWED FOR STUDIES AND DECISIONMAKING; AMENDING SECTIONS 75-20-104, 75-20-105, 75-20-202, 75-20-205, 75-20-211, 75-20-213, 75-20-216, 75-20-217, 75-20-219, 75-20-220, 75-20-222, 75-20-225 THROUGH 75-20-227, 75-20-301 THROUGH 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-501 THROUGH 75-20-503, 75-20-1202, ELIMINATE BASELINE STUDIES OF ALTERNATIVE SITES FOR ENERGY GENERATION AND CONVERSION FACILITIES FROM THE MONTANA MAJOR FACILITY SITING ACT; TO CLARIFY RULEMAKING AUTHORITY OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 75-20-105, 75-20-211, 75-20-216, 75-20-219, 75-20-301, 75-20-304, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"75-20-104. Definitions. In this chapter, unless the 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 the rules adopted hereunder;

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, 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 or a natural gas or crude oil gathering line 17 inches or less in inside diameter;

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

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

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

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site

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

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

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

15 (d) the relocation or upgrading of an existing
 16 facility defined by (b) or (c) of subsection (10) (11)(b) or
 17 (11)(c), including upgrading to a design capacity covered by
 18 subsection (10)(b) (11)(b), except that the term does not
 19 include normal maintenance or repair of an existing
 20 facility;

21 (8) "Cost" means the estimated cost in dollars at the
 22 time of proposed construction of a facility or associated
 23 facility located in Montana;

24 (9) "Department" means the department of natural
 25 resources and conservation provided for in Title 2, chapter

1 15, part 33;

2 (9) (10) "Department of health" means the department of
 3 health and environmental sciences provided for in Title 2,
 4 chapter 15, part 21;

5 (10) (11) "Facility" means:

6 (a) except for crude oil and natural gas refineries
 7 and those facilities subject to The Montana Strip and
 8 Underground Mine Reclamation Act, each plant, unit, or other
 9 facility and associated facilities designed for or capable
 10 of:

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

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

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

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

25 (v) utilizing or converting 500,000 tons of coal per

1 year--or--more--or--any--addition--thereto--having--an--estimated
2 cost--in--excess--of--\$10--million;

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

9 {c)--each--pipeline,--whether--partially--or--wholly--within
10 the--state,--greater--than--17--inches--in--inside--diameter--and--30
11 miles--in--length,--and--associated--facilities;

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

18 {e)--any--underground--in--situ--gasification--of--coal;

19 {11}{12}--"Person"--means--any--individual,--group,--firm,
20 partnership,--corporation,--cooperative,--association,
21 government--subdivision,--government--agency,--local--government,
22 or--other--organization--or--entity;

23 {12}{13}--"Transmission--substation"--means--any--structure,
24 device,--or--equipment--assemblage,--commonly--located--and
25 designed--for--voltage--regulation,--circuit--protection,--or

1 switching--necessary--for--the--construction--or--operation--of--a
2 proposed--transmission--line;

3 {13}{14}--"Utility"--means--any--person--engaged--in--any
4 aspect--of--the--production,--storage,--sale,--delivery,--or
5 furnishing--of--heat,--electricity,--gas,--hydrocarbon--products,
6 or--energy--in--any--form--for--ultimate--public--use;"

7 Section 1. Section 75-20-105, MCA, is amended to read:

8 "75-20-105. Adoption of rules. The board may adopt
9 rules implementing the provisions of this chapter, including
10 but not limited to:

11 {1}--rules--governing--the--form--and--content--of
12 applications;

13 {2}--rules--further--defining--the--terms--used--in--this
14 chapter;

15 {3}--rules--governing--the--form--and--content--of--long--range
16 plans;

17 {4}--any--other--rules--the--board--considers--necessary--to
18 accomplish--the--purposes--and--objectives--of--this--chapter."

19 Section 3. Section 75-20-202, MCA, is amended to read:

20 "75-20-202. Exemptions. {1}--A--certificate--is--not
21 required--under--this--chapter--for--a--facility--under--diligent
22 onsite--physical--construction--or--in--operation--on--January--1,
23 1973;

24 {2}--The--board--may--adopt--reasonable--rules--establishing
25 exemptions--from--this--chapter--for--the--relocation,

1 reconstruction, or upgrading of a facility that:

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

3 (b) (i) is unlikely to have a significant

4 environmental impact by reason of length, size, location,

5 available space or right-of-way, or construction methods; or

6 (ii) utilizes coal, wood, biomass, grain, wind, or sun

7 as a fuel source and the technology of which will result in

8 greater efficiency, promote energy conservation, and promote

9 greater system reliability than the existing facility.

10 (3) A person proposing to construct an exempt facility

11 shall pay to the department reasonable costs, if any,

12 incurred by the department in processing the exemption.

13 (4) This chapter does not apply to a facility defined

14 in 75-20-104(10)(c)(ii)(e) that has been designated by the

15 governor for environmental review by an executive agency of

16 the state for the purpose of complying with Title 75,

17 chapter 1, pursuant to Executive Order 4-81 and prior to

18 July 1, 1985."

19 Section 4. Section 75-20-205, MCA, is amended to read:

20 "75-20-205. Centerline location. (1) For all

21 facilities defined in 75-20-104(10)(b)(ii)(b) and

22 (10)(c)(ii)(c) and associated facilities certified under

23 this chapter, the board shall condition the certificate upon

24 board approval of a final centerline location.

25 (2) The final centerline location must be determined

1 in a noncontested case proceeding before the board after the

2 submission of a centerline location report by the

3 department.

4 (3) The department shall consult with the certificate

5 holder and the affected landowners prior to making its

6 report.

7 (4) The department's report must be prepared

8 considering the criteria set forth in 75-20-301 and

9 75-20-503 and the findings of fact and conclusions of law

10 set out in the board decision.

11 (5) The department report may be completed on segments

12 of a certified facility as is convenient to the certificate

13 holder.

14 (6) The certificate holder shall initiate the final

15 centerline location approval process by submitting a

16 proposed centerline location plan to the department. The

17 certificate holder shall pay to the department the actual

18 costs incurred in processing a final centerline location not

19 to exceed 25% of the filing fee paid under 75-20-215."

20 Section 2. Section 75-20-211, MCA, is amended to read:

21 "75-20-211. Application -- filing and contents --

22 proof of service and notice. (1) (a) An applicant shall file

23 with the department and department of health a joint

24 application for a certificate under this chapter and for the

25 permits required under the laws administered by the

1 department of health and the board of health in such form as
2 the board requires under applicable rules, containing the
3 following information:

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

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

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

9 (iv) for facilities defined in 75-20-104~~(1)(b)~~ and
10 ~~(1)(c)~~ (10)(B) AND (10)(C), a description of reasonable
11 alternate locations ~~for--the--proposed--facility~~ FOR THE
12 FACILITY, a general description of the comparative merits
13 and detriments of each location submitted, and a statement
14 of the reasons why the primary proposed location is best
15 suited for the facility;

16 (v) FOR FACILITIES AS DEFINED IN 75-20-104(10)(B) AND
17 (10)(C), baseline data for the ~~primary--and--reasonable~~
18 ~~alternate-locations~~ proposed-location PRIMARY AND REASONABLE
19 ALTERNATE LOCATIONS, OR FOR FACILITIES AS DEFINED IN
20 75-20-104(10)(A), (10)(D), AND (10)(E), BASELINE DATA FOR
21 THE PROPOSED LOCATION AND, AT THE APPLICANT'S OPTION, ANY
22 ALTERNATIVE LOCATIONS ACCEPTABLE TO THE APPLICANT FOR SITING
23 THE FACILITY;

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

1 (vii) such other relevant information as the applicant
2 ~~considers-relevant~~ submits CONSIDERS RELEVANT or as the
3 board and board of health by order or rule or the department
4 and 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 is proposed OR IS ALTERNATIVELY
20 PROPOSED to be located, ~~---both--as--primarily--and--as~~
21 ~~alternatively-proposed~~ and on the following state government
22 agencies:

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

- 1 (d) department of state lands;
- 2 (e) department of commerce;
- 3 (f) department of highways;
- 4 (g) department of revenue.

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

8 (5) An application shall also be accompanied by proof
 9 that public notice thereof was given to persons residing in
 10 the area ~~or alternative areas~~ in which any portion of the
 11 proposed facility ~~may~~ is proposed OR IS ALTERNATIVELY
 12 PROPOSED to be located, by publication of a summary of the
 13 application in those newspapers that will substantially
 14 inform those persons of the application."

15 ~~Section 6, Section 75-20-213, MCA, is amended to read:~~

16 ~~"75-20-213. Supplemental material amendments. (1)~~
 17 ~~An application for an amendment of an application or a~~
 18 ~~certificate shall be in such form and contain such~~
 19 ~~information as the board by rule or the department by order~~
 20 ~~prescribes. Notice of such an application shall be given as~~
 21 ~~set forth in subsections (3), (4), and (5) of 75-20-211.~~

22 ~~(2) An application may be amended by an applicant any~~
 23 ~~time prior to the department's recommendation. If the~~
 24 ~~proposed amendment is such that it prevents the department,~~
 25 ~~the department of health, or the agencies listed in~~

1 ~~75-20-216(5) from carrying out their duties and~~
 2 ~~responsibilities under this chapter, the department may~~
 3 ~~require such additional filing fees as the department~~
 4 ~~determines it demonstrates to the applicant as necessary, or~~
 5 ~~the department may require a new application and filing fee.~~

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

14 Section 3. Section 75-20-216, MCA, is amended to read:

15 "75-20-216. Study, evaluation, and report on proposed
 16 facility -- assistance by other agencies. (1) After receipt
 17 of an application, the department and department of health
 18 shall within 90 days notify the applicant in writing that:

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

21 (b) the application is not in compliance and list the
 22 deficiencies therein; and upon correction of these
 23 deficiencies and resubmission by the applicant, the
 24 department and department of health shall within 30 days
 25 notify the applicant in writing that the application is in

1 compliance and is accepted as complete.

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

14 (3) The department of health ~~and the board of health~~
 15 shall within 1 year following the date of acceptance of an
 16 application ~~and the board of health or department of~~
 17 ~~health, if applicable, within an additional 6 months~~ AND THE
 18 BOARD OF HEALTH OR DEPARTMENT OF HEALTH, IF APPLICABLE,
 19 WITHIN AN ADDITIONAL 6 MONTHS, issue any decision, opinion,
 20 order, certification, or permit required under the laws
 21 administered by the department of health or the board of
 22 health and this chapter. The department of health and the
 23 board of health shall determine compliance with all
 24 standards, permit requirements, and implementation plans
 25 under their jurisdiction for the ~~primary and reasonable~~

1 ~~alternate locations~~ proposed location OR ANY PROPOSED
 2 ALTERNATE LOCATION in their decision, opinion, order,
 3 certification, or permit. The decision, opinion, order,
 4 certification, or permit, with or without conditions, is
 5 conclusive on all matters that the department of health and
 6 board of health administer, and any of the criteria
 7 specified in subsections (2) through (7) of 75-20-503 that
 8 are a part of the determinations made under the laws
 9 administered by the department of health and the board of
 10 health. Although the decision, opinion, order,
 11 certification, or permit issued under this subsection is
 12 conclusive, the board retains authority to make the
 13 determination required under 75-20-301~~(2)(b)~~ and (2)(c). The
 14 decision, opinion, order, certification, or permit of the
 15 department of health or the board of health satisfies the
 16 review requirements by those agencies and shall be
 17 acceptable in lieu of an environmental impact statement
 18 under the Montana Environmental Policy Act. A copy of the
 19 decision, opinion, order, certification, or permit shall be
 20 served upon the department and the board ~~and shall be~~
 21 ~~utilized as part of their final site selection process~~ AND
 22 SHALL BE UTILIZED AS PART OF THEIR FINAL SITE SELECTION
 23 PROCESS. Prior to the issuance of a preliminary decision by
 24 the department of health and pursuant to rules adopted by
 25 the board of health, the department of health shall provide

1 an opportunity for public review and comment.

2 (4) Within ~~22 months~~ 1 year 22 MONTHS following

3 acceptance of an application for a facility as defined in

4 ~~(a) and (d) of 75-20-104(10)(11) and for a facility as~~

5 ~~defined in (b) and (c) of 75-20-104(10) which is more than~~

6 ~~30 miles in length and within 1 year for a facility as~~

7 ~~defined in (b) and (c) of 75-20-104(10) which is 30 miles or~~

8 ~~less in length (A) AND (D) OF 75-20-104(10) AND FOR A~~

9 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

10 MORE THAN 30 MILES IN LENGTH, AND WITHIN 1 YEAR FOR A

11 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

12 30 MILES OR LESS IN LENGTH, the department shall make a

13 report to the board which shall contain the department's

14 studies, evaluations, recommendations, RECOMMENDATIONS,

15 other pertinent documents resulting from its study and

16 evaluation, and an environmental impact statement or

17 analysis, ~~if any,~~ prepared pursuant to the Montana

18 Environmental Policy Act, ~~if any, if the application is for~~

19 ~~a combination of two or more facilities, the department~~

20 ~~shall make its report to the board within the greater of the~~

21 ~~lengths of time provided for in this subsection for either~~

22 ~~of the facilities, IF ANY. IF THE APPLICATION IS FOR A~~

23 COMBINATION OF TWO OR MORE FACILITIES, THE DEPARTMENT SHALL

24 MAKE ITS REPORT TO THE BOARD WITHIN THE GREATER OF THE

25 LENGTHS OF TIME PROVIDED FOR IN THIS SUBSECTION FOR EITHER

1 OF THE FACILITIES.

2 (5) The departments of highways; commerce; fish,

3 wildlife, and parks; state lands; revenue; and public

4 service regulation shall report to the department

5 information relating to the impact of the proposed site on

6 each department's area of expertise. ~~The report may include~~

7 ~~opinions as to the advisability of granting, denying, or~~

8 ~~modifying the certificate. THE REPORT MAY INCLUDE OPINIONS~~

9 ~~AS TO THE ADVISABILITY OF GRANTING, DENYING, OR MODIFYING~~

10 ~~THE CERTIFICATE.~~ The department shall allocate funds

11 obtained from filing fees to the departments making reports

12 to reimburse them for the costs of compiling information and

13 issuing the required report."

14 ~~Section 87--Section 75-20-217-MEA, is amended to read:~~

15 ~~"75-20-217--Voiding an application: (1) Upon request,~~

16 ~~an applicant is entitled to notice and a hearing as provided~~

17 ~~in 2-4-601 and 2-4-604 if the department proposes to void an~~

18 ~~application:~~

19 ~~(2) An~~ Following the hearing provided for in

20 subsection (1), an application may be voided by the

21 department for:

22 ~~(1)(a) any material and knowingly false statement in~~

23 ~~the application or in accompanying statements or studies~~

24 ~~required of the applicant;~~

25 ~~(2)(b) failure to file an application in substantially~~

1 ~~the form and content required by this chapter and the rules~~
 2 ~~adopted thereunder; or~~

3 ~~(3)(c) failure to deposit the filing fee as provided~~
 4 ~~in 75-20-215."~~

5 Section 4. Section 75-20-219, MCA, is amended to read:

6 "75-20-219. Amendments to a certificate. (1) Within 30
 7 days after notice of an amendment to a certificate is given
 8 as set forth in 75-20-213(1), including notice to all active
 9 parties to the original proceeding, the department shall
 10 determine whether the proposed change in the facility would
 11 result in any a material increase in any environmental
 12 impact of the facility or a substantial change in the
 13 location ~~of all or a portion~~ OF ALL OR A PORTION of the
 14 facility ~~other than as provided in the alternates~~ as set
 15 forth in the ~~original application~~ CERTIFICATE. If the
 16 department determines that the proposed change would result
 17 in any a material increase in any environmental impact of
 18 the facility or a substantial change in the location of all
 19 or a portion of the facility, the board shall hold a hearing
 20 in the same manner as a hearing is held on an application
 21 for a certificate. After hearing, the board shall grant,
 22 deny, or modify the amendment with such conditions as it
 23 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 a material increase in any environmental impact or would
 2 not be a substantial change in the location ~~of all or a~~
 3 portion OF ALL OR A PORTION of the facility, the board shall
 4 automatically grant the amendment either as applied for or
 5 upon such terms or conditions as the board considers
 6 appropriate unless the department's determination is
 7 appealed to the board within 15 days after notice of the
 8 department's determination is 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 a material increase in
 12 any environmental impact of the facility or a substantial
 13 change in the location ~~of all or a portion~~ OF ALL OR A
 14 PORTION of the facility, the applicant has the burden of
 15 showing by clear and convincing evidence that the amendment
 16 should be granted.

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

1 material increase in any environmental impact of the
 2 facility or a substantial change in the location of ~~all or a~~
 3 portion OF ALL OR A PORTION of the facility ~~other than as~~
 4 ~~provided in the alternates set forth in the original~~
 5 application AS SET FORTH IN THE CERTIFICATE.

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

12 ~~Section 10. Section 75-20-220, MCA, is amended to~~
 13 ~~read:~~

14 ~~"75-20-220. Hearing examiner-----restrictions-----~~
 15 ~~duties:--(1)--If--the--board--appoints--a--hearing--examiner--to~~
 16 ~~conduct--any--certification--proceedings--under--this--chapter,~~
 17 ~~the--hearing--examiner--may--not--be--a--member--of--the--board,~~
 18 ~~an--employee--of--the--department,~~
 19 ~~or--a--member--or--employee--of--the~~
 20 ~~department--of--health--or--board--of--health. A hearing examiner,~~
 21 ~~if--any,~~
 22 ~~shall--be--appointed--by--the--board--within--20--days--after~~
 23 ~~the--department's--report--has--been--filed--with--the--board,~~
 24 ~~if--a~~
 25 ~~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.~~

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

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

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

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

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

25 (7) ~~Public witnesses and other interested public~~

1 parties may appear and present oral testimony at the hearing
2 or submit written testimony to the hearing examiner at the
3 time of their appearance. These witnesses are subject to
4 cross-examination:

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

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

24 {10} The hearing examiner appointed to conduct a
25 certification proceeding under this chapter shall insure

1 that the time of the proceeding, from the date the
2 department's report is filed with the board until the
3 recommended report and order of the examiner is filed with
4 the board, does not exceed 90 6 calendar months unless
5 extended by the board for good cause:

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

11 Section 11, Section 75-20-222, MCA, is amended to
12 read:

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

20 {2} A record shall be made of the hearing and of all
21 testimony taken:

22 {3} In a certification proceeding held under this
23 chapter, the applicant has the burden of showing by clear
24 and convincing evidence that the application should be
25 granted and that the criteria of 75-20-301 are met:

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

12 Section 12, Section 75-20-225, MCA, is amended to
 13 read:

14 "75-20-225. Certificate renewal application
 15 contents filing fee. (1) Any certificate holder for a
 16 facility as defined in 75-20-104(10)(a)(i)(ii)(a)(i) may
 17 apply for renewal of a certificate prior to the certificate
 18 lapsing.

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

22 (3) An application for renewal of a certificate must
 23 include updated information on the matters listed in
 24 75-20-211(1)(a) that have changed since the original
 25 application and such other information as the board requires

1 by rule for certification. The matters listed in
 2 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
 3 locations must be updated only if the board determines that
 4 within the certified location significant changes have
 5 occurred to warrant a review of alternate locations.

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

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

- 14 (a) 0.125% of any estimated cost up to \$300 million;
- 15 plus
- 16 (b) 0.063% of any estimated cost over \$300 million."

17 Section 13, Section 75-20-226, MCA, is amended to
 18 read:

19 "75-20-226. Renewal study. (1) Upon receipt of a
 20 completed application for renewal of a certificate, the
 21 department shall evaluate the updated information and any
 22 significant changes, as applicable, in need, alternatives,
 23 technology, baseline environment, and the environmental
 24 impacts of a facility that have taken place since the
 25 original study performed in granting the certificate.

1 considering the applicable criteria listed in 75-20-301 and
2 75-20-503 and the original board findings and certificate
3 conditions:

4 {2} The department of health and the board of health,
5 within 10 months of acceptance of a complete renewal
6 application, shall complete the statutory duties established
7 in 75-20-216(3). A copy of any decision, opinion, order,
8 certification, or permit must be served on the department
9 and the board and must be used as part of their
10 decisionmaking process.

11 {3} Within 12 months following acceptance of a
12 complete application for renewal of a certificate, the
13 department shall make a report to the board. This report
14 must contain the department's studies, evaluations,
15 recommendations, and other pertinent documents resulting
16 from its study and evaluation and an updated environmental
17 impact statement or analysis, if any, pursuant to the
18 Montana Environmental Policy Act. The department's report
19 must be directed to the question of whether the original
20 board findings and conditions have been or need to be
21 altered as a result of any significant changes, as
22 applicable, in need, alternatives, technology, baseline
23 environment, or environmental impact since issuance of the
24 certificate, considering the applicable criteria listed in
25 75-20-301 and 75-20-503.

1 {4} The departments of highways, commerce, fish,
2 wildlife, and parks, state lands, revenue, and public
3 service regulation shall report to the department
4 information relating to the impact of the proposed site on
5 each department's area of responsibility. The report may
6 include opinions as to the advisability of renewing the
7 certificate. The department shall allocate funds obtained
8 from filing fees to the departments making reports to
9 reimburse them for the cost of compiling information and
10 issuing the required reports.

11 Section 14, Section 75-20-227, MCA, is amended to
12 read:

13 "75-20-227. Certificate renewal hearing decision:
14 {1} The board shall follow the provisions of 75-20-210
15 through 75-20-222 in making decisions on certificate
16 renewals.

17 {2} Within 60 days after submission of the recommended
18 decision by the hearing examiner, the board shall make
19 complete findings, issue an opinion, and render a decision
20 upon the record, either granting or denying the renewal
21 application or renewing the certificate with such changes in
22 the terms and conditions as the board considers appropriate.

23 {3} The board may not renew a certificate either as
24 proposed by the applicant or as modified by the board unless
25 it finds and determines the criteria in 75-20-301 and

1 75-20-503,---considering---any---significant---changes,---as
 2 applicable, in--need,--alternatives,--technology,--baseline
 3 environment,--and--environmental--impact."

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;
- 18 (b) the nature of the probable environmental impact;
- 19 (c) that the facility represents the minimum MINIMIZES
 20 adverse environmental impact, considering the state of
 21 available technology and,---for--facilities--defined--in
 22 75-20-104(i)(b) and (i)(c), the nature and--economics AND
 23 ECONOMICS of the various alternatives alternate locations
 24 VARIOUS ALTERNATIVES;

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

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

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

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

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

11 (f) that the location of the facility as proposed
 12 conforms to applicable state ~~and local~~ AND LOCAL laws and
 13 regulations issued thereunder, ~~except that the board may~~
 14 ~~refuse to apply any local law or regulation if it finds~~
 15 ~~that, as applied to the proposed facility, the law or~~
 16 ~~regulation is unreasonably restrictive in view of the~~
 17 ~~existing technology, of factors of cost or economics, or of~~
 18 ~~the needs of consumers, whether located inside or outside of~~
 19 ~~the directly affected government subdivisions, EXCEPT THAT~~
 20 THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF
 21 IT FINDS THAT, AS APPLIED TO THE PROPOSED FACILITY, THE LAW
 22 OR REGULATION IS UNREASONABLY RESTRICTIVE IN VIEW OF THE
 23 EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF
 24 THE NEEDS OF CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF
 25 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 defined in 75-20-104(1)(b) and~~
7 ~~(1)(c)~~ that the use of public lands for location of the
8 facility was evaluated and public lands were selected
9 whenever their use is as economically practicable as the use
10 of private lands and compatible with the environmental
11 criteria listed in 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;

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

23 (e) 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 16, Section 75-20-302, MCA, is amended to~~
3 ~~read:~~

4 ~~"75-20-302, Conditions imposed, (1) If the board~~
5 ~~determines that the location of all or a part of the a~~
6 ~~proposed facility defined in 75-20-104(1)(b) or (1)(c)~~
7 ~~should be modified, it may condition its certificate upon~~
8 ~~such modification, provided that the persons residing in the~~
9 ~~area affected by the modification have been given reasonable~~
10 ~~notice of the modification.~~

11 ~~(2) In making its findings under 75-20-301(2)(a) for a~~
12 ~~facility defined in 75-20-104(10)(a)(i)(1)(a)(i), the board~~
13 ~~may condition a certificate upon actual load growth reaching~~
14 ~~a specified level or on availability of other planned energy~~
15 ~~resources."~~

16 ~~Section 17, Section 75-20-303, MCA, is amended to~~
17 ~~read:~~

18 ~~"75-20-303, Opinion issued with decision, contents,~~
19 ~~(1) In rendering a decision on an application for a~~
20 ~~certificate, the board shall issue an opinion, stating its~~
21 ~~reasons for the action taken.~~

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

1 ~~{3}{2}--Any--certificate--issued--by--the--board--shall~~
2 ~~include--the--following:~~

3 ~~{a)--an--environmental--evaluation--statement--related--to~~
4 ~~the--facility--being--certified;--The--statement--shall--include~~
5 ~~but--not--be--limited--to--analysis--of--the--following--information:~~

6 ~~{i)--the--environmental--impact--of--the--proposed--facility;~~
7 ~~{ii)--any--adverse--environmental--effects--which--cannot--be~~
8 ~~avoided--by--issuance--of--the--certificate;~~

9 ~~{iii)--problems--and--objections--raised--by--other--federal~~
10 ~~and--state--agencies--and--interested--groups;--and~~

11 ~~{iv)--alternatives--to--the--proposed--facility;~~

12 ~~{b)--a--plan--for--monitoring--environmental--effects--of--the~~
13 ~~proposed--facility;~~

14 ~~{c)--a--plan--for--monitoring--the--certified--facility--site~~
15 ~~between--the--time--of--certification--and--completion--of~~
16 ~~construction;~~

17 ~~{d)--a--time--limit--as--provided--in--subsection--(4) {3};~~
18 ~~and~~

19 ~~{e)--a--statement--signed--by--the--applicant--showing~~
20 ~~agreement--to--comply--with--the--requirements--of--this--chapter~~
21 ~~and--the--conditions--of--the--certificate.~~

22 ~~{4){3}--(a)--The--board--shall--issue--as--part--of--the~~
23 ~~certificate--the--following--time--limits:~~

24 ~~{i)--For--a--facility--as--defined--in--(b)--or--(c)--of~~
25 ~~75-20-104(10){11}(b)-or-(11)(c) that-is-more-than--30--miles~~

1 ~~in--length;--construction--must--be--completed--within--10--years.~~

2 ~~{ii)--For--a--facility--as--defined--in--(b)--of~~
3 ~~75-20-104(10){11}(b)--that--is--30--miles--or--less--in--length;~~
4 ~~construction--must--be--completed--within--5--years.~~

5 ~~{iii)--For--a--facility--as--defined--in--(a)--of--75-20-104(10)~~
6 ~~{11)(a);--construction--must--begin--within--6--years--and--continue~~
7 ~~with--due--diligence--in--accordance--with--preliminary~~
8 ~~construction--plans--established--in--the--certificate.~~

9 ~~{b)--Unless--extended--or--renewed--in--accordance--with~~
10 ~~subsection--(4)(c) {3)(c) or--75-20-225--through--75-20-227;--a~~
11 ~~certificate--lapses--and--is--void--if--the--facility--is--not~~
12 ~~constructed--or--if--construction--of--the--facility--is--not~~
13 ~~commenced--within--the--time--limits--provided--in--this--section.~~

14 ~~{c)--The--time--limit--may--be--extended--for--a--reasonable~~
15 ~~period--upon--a--showing--by--the--applicant--to--the--board--that--a~~
16 ~~good--faith--effort--is--being--undertaken--to--complete~~
17 ~~construction--under--subsections--(4)(a)(i) subsection~~
18 ~~{3)(a)(i) and--(4)(a)(ii) or--{3)(a)(ii) or--to--begin~~
19 ~~construction--under--subsection--(4)(a)(iii) {3)(a)(iii);--Under~~
20 ~~this--subsection;--a--good--faith--effort--includes--the--process--of~~
21 ~~acquiring--any--necessary--state--or--federal--permit--or~~
22 ~~certificate--for--the--facility--and--the--process--of--judicial~~
23 ~~review--of--any--such--permit--or--certificate.~~

24 ~~{5){4}--The--provisions--of--subsection--(4) {3} apply--to~~
25 ~~any--facility--for--which--a--certificate--has--not--been--issued--or~~

1 ~~for which construction is yet to be commenced."~~

2 Section 6. Section 75-20-304, MCA, is amended to 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 subject to this chapter that a facility or
15 associated facility has been damaged or destroyed as a
16 result of fire, flood, or other natural disaster or as the
17 result of insurrection, war, or other civil disorder and
18 there exists an immediate need for construction of a new
19 facility or associated facility or the relocation of a
20 previously existing facility or associated facility in order
21 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 AND~~ 75-20-501(5) ~~and the requirements of~~
25 ~~subsections (1)(a)(iv) and (v) of~~ THE REQUIREMENTS OF

1 SUBSECTIONS (1)(A)(IV) AND (V) OF 75-20-211~~(1)(a)(iv)~~,
2 75-20-216(3), AND 75-20-303(3)(A)(IV),~~75-20-216(3) and~~
3 75-20-303(3)(a)(iv) relating to consideration of alternative
4 sites if the applicant makes a clear and convincing showing
5 to the board at a public hearing that:

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

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

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

17 (d) the proposed facility will have a beneficial
18 effect on the economy of the county in which the facility is
19 proposed to be located.

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

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

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

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

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

22 ~~Section 19--Section 75-20-402--MCA--is amended to~~
 23 ~~read:~~

24 ~~"75-20-402--Monitoring--The board, the department,~~
 25 ~~the department of health, and the board of health shall~~

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

11 ~~Section 20--Section 75-20-403--MCA--is amended to~~
 12 ~~read:~~

13 ~~"75-20-403--Revocation or suspension of certificate--~~
 14 ~~Following notice and an opportunity for a hearing, a~~
 15 ~~certificate may be revoked or suspended by the board:~~

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 21--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 22. Section 75-20-501, MCA, is amended to
13 read:

14 "75-20-501. Annual long range plan submitted. The
15 contents available to public: (1) Each utility and each
16 person contemplating the construction of a facility within
17 this state in the ensuing 10 years shall furnish annually to
18 the department for its review a long range plan for the
19 construction and operation of facilities.

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

22 (a) the general location, size, and type of all
23 facilities to be owned and operated by the utility or person
24 whose when construction is projected to commence during the
25 ensuing 10 years, as well as those facilities to be removed

1 from service during the planning period;

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

7 (c) a description of the efforts to involve
8 environmental protection and land use planning agencies in
9 the planning process, as well as other efforts to identify
10 and minimize environmental problems at the earliest possible
11 stage in the planning process;

12 (d) projections of the demand for the service rendered
13 by the utility or person and explanation of the basis for
14 those projections and a description of the manner and extent
15 to which the proposed facilities will meet the projected
16 demand; and

17 (e) additional information that the board by rule or
18 the department on its own initiative or upon the advice of
19 interested state agencies might request requests in order to
20 carry out the purposes of this chapter.

21 (3) The plan shall be furnished to the governing body
22 of each county in which any facility included in the plan
23 under (2)(a) of this section is proposed to be located and
24 made available to the public by the department. The utility
25 or person shall give public notice throughout the state of

1 its plan by filing the plan with the environmental quality
 2 council, the department of health and environmental
 3 sciences, the department of highways, the department of
 4 public service regulation, the department of state lands,
 5 the department of fish, wildlife, and parks, and the
 6 department of commerce. Citizen environmental protection and
 7 resource planning groups and other interested interested
 8 persons may obtain a plan by written request and payment
 9 therefor to the department.

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

15 (5) No person may file an application for a facility
 16 unless the facility had been was adequately identified in a
 17 long range plan at least 2 years prior to acceptance of an
 18 application by the department, except for electric
 19 transmission lines of a design capacity of 230 kilovolts or
 20 less."

21 Section 23, Section 75-20-502, MCA, is amended to
 22 read:

23 "75-20-502. Study of included facilities. If a
 24 utility or person lists and identifies a proposed facility
 25 in its the plan, submitted pursuant to 75-20-501, as one on

1 which construction is proposed to be commenced within the
 2 5-year period following submission of the plan, the
 3 department shall commence examination and evaluation of the
 4 proposed site to determine whether construction of the
 5 proposed facility would unduly impair the environmental
 6 values in 75-20-503. This study may be continued until such
 7 time as a person files an application for a certificate
 8 under 75-20-211. Information gathered under this section may
 9 be used to support findings and recommendations required for
 10 issuance of a certificate."

11 Section 24, Section 75-20-503, MCA, is amended to
 12 read:

13 "75-20-503. Environmental factors evaluated. In
 14 evaluating long range plans, conducting 5-year site reviews,
 15 and evaluating applications for certificates, the board and
 16 department shall give consideration to the following list of
 17 environmental factors, where applicable, and may by rule add
 18 to the categories of this section:

- 19 (1) energy needs; requirements;
 20 (a) growth in demand and projections of need;
 21 (b) availability and desirability of alternative
 22 sources of energy;
 23 (c) availability and desirability of alternative
 24 sources of energy in lieu of the proposed facility;
 25 (d) promotional activities of the utility which may

1 have-given-rise-to-the-need-for-this-facility;
 2 {e}--socially-beneficial-uses-of-the-output-of-this
 3 facility,---including---its---uses--to--protect--or--enhance
 4 environmental-quality;
 5 {f}--conservation-activities--which--could--reduce--the
 6 need-for-more-energy;
 7 {g}--research---activities---of---the---utility---of---new
 8 technology---available---to---it---which---might---minimize
 9 environmental-impact;
 10 {2}--land-use-impacts:
 11 {a}--area-of-land-required-and-ultimate-use;
 12 {b}--consistency--with--areawide-state-and-regional-land
 13 use-plans;
 14 {c}--consistency-with--existing--and--projected--nearby
 15 land-use;
 16 {d}--alternative-uses-of-the-site;
 17 {e}--impact---on---population---already---in---the---area;
 18 population-attracted-by-construction--or--operation--of--the
 19 facility-itself;
 20 {f}--impact---of---availability--of--energy--from--this
 21 facility-on-growth-patterns-and-population-dispersal;
 22 {g}--geologic-suitability-of-the-site-or-route;
 23 {h}--seismologic-characteristics;
 24 {i}--construction-practices;
 25 {j}--extent-of-erosion,scouring,wasting-of-land,both

1 at-site-and-as-a--result--of--fossil-fuel--demands--of--the
 2 facility;
 3 {k}--corridor--design--and--construction-precautions-for
 4 transmission-lines-or-aqueducts;
 5 {l}--scenic-impacts;
 6 {m}--effects-on-natural-systems,wildlife,plant-life;
 7 {n}--impacts---on---important--historic--architectural,
 8 archeological,--and-cultural-areas-and-features;
 9 {o}--extent-of--recreation--opportunities--and--related
 10 compatible-uses;
 11 {p}--public-recreation-plan-for-the-project;
 12 {q}--public-facilities-and-accommodation;
 13 {r}--opportunities--for--joint-use-with-energy-intensive
 14 industries-or-other-activities-to-utilize--the--waste--heat
 15 from-facilities;
 16 {s}--for--facilities--defined--in--75-20-104{11}{b}-and
 17 {11}{c}; opportunities-for-using-public-lands--for--location
 18 of--facilities--whenever--as-economically-practicable-as-the
 19 use-of-private-lands-and-compatible-with-the-requirements-of
 20 this-section;
 21 {3}--water-resources-impacts:
 22 {a}--hydrologic-studies-of-adequacy-of-water-supply-and
 23 impact-of-facility-on-streamflow,lakes,and-reservoirs;
 24 {b}--hydrologic-studies--of--impact--of--facilities--on
 25 groundwater;

1 {e)--cooling-system-evaluation,-including-consideration
 2 of-alternatives;
 3 {d)--inventory---of---effluents,-including-physical,
 4 chemical,-biological,-and-radiological-characteristics;
 5 {e)--hydrologic-studies--of--effects--of--effluents--on
 6 receiving---waters,-including--mixing--characteristics--of
 7 receiving-waters,-changed--evaporation--due--to--temperature
 8 differentials,-and-effect-of-discharge-on-bottom-sediments;
 9 {f)--relationship-to-water-quality-standards;
 10 {g)--effects-of-changes--in--quantity--and--quality--on
 11 water--use--by-others,-including-both-withdrawal-and-in-situ
 12 uses;
 13 {h)--relationship-to-projected-uses;
 14 {i)--relationship-to-water-rights;
 15 {j)--effects-on-plant-and-animal-life,-including-algae,
 16 macroinvertebrates,-and-fish-population;
 17 {k)--effects--on--unique---or---otherwise---significant
 18 ecosystems,-e.g.,-wetlands;
 19 {l)--monitoring-programs;
 20 {4)--air-quality-impacts:
 21 {a)--meteorology--wind--direction-and-velocity,-ambient
 22 temperature---ranges,-precipitation---values,-inversion
 23 occurrence,-other-effects-on-dispersion;
 24 {b)--topography--factors-affecting-dispersion;
 25 {c)--standards--in--effect-and-projected-for-emissions;

1 {d)--design-capability-to-meet-standards;
 2 {e)--emissions-and-controls:
 3 {i)--stack-design;
 4 {ii)--particulates;
 5 {iii)--sulfur-oxides;
 6 {iv)--oxides-of-nitrogen;-and
 7 {v)--heavy---metals,-trace---elements,-radioactive
 8 materials,-and-other-toxic-substances;
 9 {f)--relationship--to-present-and-projected-air-quality
 10 of-the-area;
 11 {g)--monitoring-program;
 12 {5)--solid-wastes-impacts:
 13 {a)--solid-waste-inventory;
 14 {b)--disposal-program;
 15 {c)--relationship---of---disposal---practices---to
 16 environmental-quality-criteria;
 17 {d)--capacity--of--disposal--sites--to-accept-projected
 18 waste-loadings;
 19 {6)--radiation-impacts:
 20 {a)--land-use-controls-over-development-and-population;
 21 {b)--wastes-and-associated-disposal-program-for--solid,
 22 liquid,-radioactive,-and-gaseous-wastes;
 23 {c)--analyses---and---studies---of---the---adequacy--of
 24 engineering-safeguards-and-operating-procedures;
 25 {d)--monitoring--adequacy--of--devices---and---sampling

1 techniques;
 2 {7}--noise-impacts;
 3 {a}--construction-period-levels;
 4 {b}--operational-levels;
 5 {c}--relationship-of-present-and-projected-noise-levels
 6 to-existing-and-potential-stricter-noise-standards;
 7 {d}--monitoring--adequacy-of-devices-and-methods."
 8 Section-25,--Section--75-20-1202,--MCA,--is--amended--to
 9 read:
 10 "75-20-1202--Definitions,--As-used-in--this--part--and
 11 75-20-201--through--75-20-203,--the--following--definitions
 12 apply:
 13 {i}--{a}--"Nuclear-facility"--means-each-plant,--unit,--or
 14 other-facility-designed-for-or-capable-of:
 15 {ii}--generating--50-megawatts-of-electricity-or-more-by
 16 means-of-nuclear-fission;
 17 {iii}--converting,--enriching,--fabricating,--or
 18 reprocessing-uranium-minerals-or-nuclear-fuels,--or
 19 {iiii}--storing--or--disposing--of--radioactive-wastes-or
 20 materials-from-a-nuclear-facility;
 21 {b}--"Nuclear---facility"---does---not---include---any
 22 small-scale--facility-used-solely-for-educational,--research,
 23 or--medical--purposes--not--connected--with--the--commercial
 24 generation-of-energy;
 25 {2}--"Facility",--as--defined--in--75-20-104(10){11},--is

1 further-defined-to-include-any-nuclear-facility--as--defined
 2 in-subsection-(1){a}-of-this-section."
 3 Section 7. Section 75-20-1205, MCA, is amended to
 4 read:
 5 "75-20-1205. Emergency approval authority invalid for
 6 nuclear facilities. Notwithstanding the provisions of
 7 subsections-(2)-and-(3)-of 75-20-304(2) AND (3), the board
 8 may not waive compliance with any of the provisions of this
 9 part or 75-20-201 through 75-20-203 relating to
 10 certification of a nuclear facility."
 11 NEW SECTION. Section 8. Extension of authority. Any
 12 existing authority of the board of natural resources and
 13 conservation, the board of health and environmental
 14 sciences, and the department of health and environmental
 15 sciences to make rules on the subject of the provisions of
 16 this act is extended to the provisions of this act.
 17 NEW SECTION. Section 9. Effective date. This act is
 18 effective on passage and approval.

-End-

SENATE BILL NO. 292

INTRODUCED BY KEATING, GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; ELIMINATING BASELINE STUDIES OF ALTERNATIVE SITES FROM CONSIDERATION; REDUCING THE TIME ALLOWED FOR STUDIES AND DECISIONMAKING; AMENDING SECTIONS 75-20-104, 75-20-105, 75-20-202, 75-20-205, 75-20-211, 75-20-213, 75-20-216, 75-20-217, 75-20-219, 75-20-220, 75-20-222, 75-20-225 THROUGH 75-20-227, 75-20-301 THROUGH 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-501 THROUGH 75-20-503, 75-20-1202, ELIMINATE BASELINE STUDIES OF ALTERNATIVE SITES FOR ENERGY GENERATION AND CONVERSION FACILITIES FROM THE MONTANA MAJOR FACILITY SITING ACT; TO CLARIFY RULEMAKING AUTHORITY OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 75-20-105, 75-20-211, 75-20-216, 75-20-219, 75-20-301, 75-20-304, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"75-20-104. Definitions. In this chapter, unless the 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 the rules adopted hereunder;

{3} "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, 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 or a natural gas or crude oil gathering line 17 inches or less in inside diameter;

{4} "Board" means the board of natural resources and conservation provided for in 2-15-3302;

{5} "Board of health" means the board of health and environmental sciences provided for in 2-15-2104;

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

{7} "Commence to construct" means:

{a} any clearing of land, excavation, construction, or other action that would affect the environment of the site



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

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

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

15 (d) the relocation or upgrading of an existing
 16 facility defined by (b) or (c) of subsection (10) (11)(b) or
 17 (11)(c), including upgrading to a design capacity covered by
 18 subsection (10)(b) (11)(b), except that the term does not
 19 include normal maintenance or repair of an existing
 20 facility;

21 (8) "Cost" means the estimated cost in dollars at the
 22 time of proposed construction of a facility or associated
 23 facility located in Montana;

24 (9)(9) "Department" means the department of natural
 25 resources and conservation provided for in Title 2, chapter

1 15, part 33;

2 (9)(10) "Department of health" means the department of
 3 health and environmental sciences provided for in Title 2,
 4 chapter 15, part 21;

5 (10)(11) "Facility" means:

6 (a) except for crude oil and natural gas refineries
 7 and those facilities subject to The Montana Strip and
 8 Underground Mine Reclamation Act, each plant, unit, or other
 9 facility and associated facilities designed for or capable
 10 of:

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

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

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

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

25 (v) utilizing or converting 500,000 tons of coal per

1 year--or--more--or--any--addition--thereto--having--an--estimated
2 cost--in--excess--of--\$10--million;

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

9 {c)--each--pipeline,--whether--partially--or--wholly--within
10 the--state,--greater--than--17--inches--in--inside--diameter--and--30
11 miles--in--length,--and--associated--facilities;

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

18 {e)--any--underground--in-situ--gasification--of--coal;

19 {11}{12}--"Person"--means--any--individual,--group,--firm,
20 partnership,--corporation,--cooperative,--association,
21 government--subdivision,--government--agency,--local--government,
22 or--other--organization--or--entity;

23 {12}{13}--"Transmission--substation"--means--any--structure,
24 device,--or--equipment--assemblage,--commonly--located--and
25 designed--for--voltage--regulation,--circuit--protection,--or

1 switching--necessary--for--the--construction--or--operation--of--a
2 proposed--transmission--line;

3 {13}{14}--"Utility"--means--any--person--engaged--in--any
4 aspect--of--the--production,--storage,--sale,--delivery,--or
5 furnishing--of--heat,--electricity,--gas,--hydrocarbon--products,
6 or--energy--in--any--form--for--ultimate--public--use."

7 Section 1. Section 75-20-105, MCA, is amended to read:

8 "75-20-105. Adoption of rules. The board may adopt
9 rules implementing the provisions of this chapter, including
10 but not limited to:

11 {1}--rules--governing--the--form--and--content--of
12 applications;

13 {2}--rules--further--defining--the--terms--used--in--this
14 chapter;

15 {3}--rules--governing--the--form--and--content--of--long--range
16 plans;

17 {4}--any--other--rules--the--board--considers--necessary--to
18 accomplish--the--purposes--and--objectives--of--this--chapter."

19 Section 3. Section 75-20-202, MCA, is amended to read:

20 "75-20-202. Exemptions. {1} A certificate is not
21 required under this chapter for a facility under diligent
22 onsite physical construction or in operation on January 1,
23 1973:

24 {2} The board may adopt reasonable rules establishing
25 exemptions from this chapter for the relocation,

1 reconstruction, or upgrading of a facility that:

2 (a) would otherwise be covered by this chapter, and

3 (b) (i) is unlikely to have a significant

4 environmental impact by reason of length, size, location,

5 available space or right-of-way, or construction methods, or

6 (ii) utilizes coal, wood, biomass, grain, wind, or sun

7 as a fuel source and the technology of which will result in

8 greater efficiency, promote energy conservation, and promote

9 greater system reliability than the existing facility;

10 (3) A person proposing to construct an exempt facility

11 shall pay to the department reasonable costs, if any,

12 incurred by the department in processing the exemption;

13 (4) This chapter does not apply to a facility defined

14 in 75-20-104(10)(c)(i)(c) that has been designated by the

15 governor for environmental review by an executive agency of

16 the state for the purpose of complying with Title 75,

17 chapter 1, pursuant to Executive Order 4-01 and prior to

18 July 1, 1905."

19 Section 4. Section 75-20-205, MCA, is amended to read:

20 "75-20-205. Centerline location. (1) For all

21 facilities defined in 75-20-104(10)(b)(i)(b) and

22 (10)(c)(i)(c) and associated facilities certified under

23 this chapter, the board shall condition the certificate upon

24 board approval of a final centerline location.

25 (2) The final centerline location must be determined

1 in a noncontested case proceeding before the board after the

2 submission of a centerline location report by the

3 department.

4 (3) The department shall consult with the certificate

5 holder and the affected landowners prior to making its

6 report.

7 (4) The department's report must be prepared

8 considering the criteria set forth in 75-20-301 and

9 75-20-503 and the findings of fact and conclusions of law

10 set out in the board decision.

11 (5) The department report may be completed on segments

12 of a certified facility as is convenient to the certificate

13 holder.

14 (6) The certificate holder shall initiate the final

15 centerline location approval process by submitting a

16 proposed centerline location plan to the department. The

17 certificate holder shall pay to the department the actual

18 costs incurred in processing a final centerline location not

19 to exceed 25% of the filing fee paid under 75-20-215."

20 Section 2. Section 75-20-211, MCA, is amended to read:

21 "75-20-211. Application -- filing and contents --

22 proof of service and notice. (1) (a) An applicant shall file

23 with the department and department of health a joint

24 application for a certificate under this chapter and for the

25 permits required under the laws administered by the

1 department of health and the board of health in such form as
2 the board requires under applicable rules, containing the
3 following information:

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

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

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

9 (iv) for facilities defined in 75-20-104(i)(b) and
10 (i)(c) (10)(B) AND (10)(C), a description of reasonable
11 alternate locations ~~for the proposed facility~~ FOR THE
12 FACILITY, a general description of the comparative merits
13 and detriments of each location submitted, and a statement
14 of the reasons why the primary proposed location is best
15 suited for the facility;

16 (v) FOR FACILITIES AS DEFINED IN 75-20-104(10)(B) AND
17 (10)(C), baseline data for the primary ~~and reasonable~~
18 ~~alternate locations proposed location~~ PRIMARY AND REASONABLE
19 ALTERNATE LOCATIONS, OR FOR FACILITIES AS DEFINED IN
20 75-20-104(10)(A), (10)(D), AND (10)(E), BASELINE DATA FOR
21 THE PROPOSED LOCATION AND, AT THE APPLICANT'S OPTION, ANY
22 ALTERNATIVE LOCATIONS ACCEPTABLE TO THE APPLICANT FOR SITING
23 THE FACILITY;

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

1 (vii) such other relevant information as the applicant
2 ~~considers relevant~~ submits CONSIDERS RELEVANT or as the
3 board and board of health by order or rule or the department
4 and 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 is proposed OR IS ALTERNATIVELY
20 PROPOSED to be located, ~~both as primary and as~~
21 ~~alternatively proposed~~ and on the following state government
22 agencies:

- 23 (a) environmental quality council;
24 (b) department of public service regulation;
25 (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~~ is proposed OR IS ALTERNATIVELY PROPOSED to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

~~Section 6:--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 subsections (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 it demonstrates 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 3. 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

1 compliance and is accepted as complete.

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

14 (3) The department of health ~~and the board of health~~
15 shall, within 1 year following the date of acceptance of an
16 application, ~~and the board of health or department of~~
17 ~~health, if applicable, within an additional 6 months~~ AND THE
18 BOARD OF HEALTH OR DEPARTMENT OF HEALTH, IF APPLICABLE,
19 WITHIN AN ADDITIONAL 6 MONTHS, issue any decision, opinion,
20 order, certification, or permit required under the laws
21 administered by the department of health or the board of
22 health and this chapter. The department of health and the
23 board of health shall determine compliance with all
24 standards, permit requirements, and implementation plans
25 under their jurisdiction for the ~~primary and reasonable~~

1 ~~alternate locations~~ proposed location OR ANY PROPOSED
2 ALTERNATE LOCATION in their decision, opinion, order,
3 certification, or permit. The decision, opinion, order,
4 certification, or permit, with or without conditions, is
5 conclusive on all matters that the department of health and
6 board of health administer, and any of the criteria
7 specified in subsections (2) through (7) of 75-20-503 that
8 are a part of the determinations made under the laws
9 administered by the department of health and the board of
10 health. Although the decision, opinion, order,
11 certification, or permit issued under this subsection is
12 conclusive, the board retains authority to make the
13 determination required under 75-20-301~~(2)(b) and~~ (2)(c). The
14 decision, opinion, order, certification, or permit of the
15 department of health or the board of health satisfies the
16 review requirements by those agencies and shall be
17 acceptable in lieu of an environmental impact statement
18 under the Montana Environmental Policy Act. A copy of the
19 decision, opinion, order, certification, or permit shall be
20 served upon the department and the board ~~and shall be~~
21 ~~utilized as part of their final site selection process~~ AND
22 SHALL BE UTILIZED AS PART OF THEIR FINAL SITE SELECTION
23 PROCESS. Prior to the issuance of a preliminary decision by
24 the department of health and pursuant to rules adopted by
25 the board of health, the department of health shall provide

1 an opportunity for public review and comment.

2 (4) Within ~~22~~ months ~~1~~ year 22 MONTHS following

3 acceptance of an application for a facility as defined in

4 ~~(a) and (d) of 75-20-104(10)(11)~~ and ~~for a facility as~~

5 ~~defined in (b) and (c) of 75-20-104(10) which is more than~~

6 ~~30 miles in length and within 1 year for a facility as~~

7 ~~defined in (b) and (c) of 75-20-104(10) which is 30 miles or~~

8 ~~less in length (A) AND (D) OF 75-20-104(10) AND FOR A~~

9 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

10 MORE THAN 30 MILES IN LENGTH, AND WITHIN 1 YEAR FOR A

11 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

12 30 MILES OR LESS IN LENGTH, the department shall make a

13 report to the board which shall contain the department's

14 studies, evaluations, recommendations, RECOMMENDATIONS,

15 other pertinent documents resulting from its study and

16 evaluation, and an environmental impact statement or

17 analysis, if any, prepared pursuant to the Montana

18 Environmental Policy Act, if any. If the application is for

19 a combination of two or more facilities, the department

20 shall make its report to the board within the greater of the

21 lengths of time provided for in this subsection for either

22 of the facilities, IF ANY. IF THE APPLICATION IS FOR A

23 COMBINATION OF TWO OR MORE FACILITIES, THE DEPARTMENT SHALL

24 MAKE ITS REPORT TO THE BOARD WITHIN THE GREATER OF THE

25 LENGTHS OF TIME PROVIDED FOR IN THIS SUBSECTION FOR EITHER

1 OF THE FACILITIES.

2 (5) The departments of highways; commerce; fish,

3 wildlife, and parks; state lands; revenue; and public

4 service regulation shall report to the department

5 information relating to the impact of the proposed site on

6 each department's area of expertise. ~~The report may include~~

7 ~~opinions as to the advisability of granting, denying, or~~

8 ~~modifying the certificate. THE REPORT MAY INCLUDE OPINIONS~~

9 ~~AS TO THE ADVISABILITY OF GRANTING, DENYING, OR MODIFYING~~

10 ~~THE CERTIFICATE.~~ The department shall allocate funds

11 obtained from filing fees to the departments making reports

12 to reimburse them for the costs of compiling information and

13 issuing the required report."

14 ~~Section 8. Section 75-20-217, MCA, is amended to read:~~

15 ~~"75-20-217. Voiding an application. (1) Upon request,~~

16 ~~an applicant is entitled to notice and a hearing as provided~~

17 ~~in 2-4-601 and 2-4-604 if the department proposes to void an~~

18 ~~application:~~

19 ~~(2) An~~ Following the hearing provided for in

20 subsection (1), an application may be voided by the

21 department for:

22 ~~(1)(a) any material and knowingly false statement in~~

23 ~~the application or in accompanying statements or studies~~

24 ~~required of the applicant;~~

25 ~~(2)(b) failure to file an application in substantially~~

1 ~~the form and content required by this chapter and the rules~~
2 ~~adopted thereunder, or~~

3 ~~(3)(c) failure to deposit the filing fee as provided~~
4 ~~in 75-28-215."~~

5 Section 4. Section 75-20-219, MCA, is amended to read:

6 "75-20-219. Amendments to a certificate. (1) Within 30
7 days after notice of an amendment to a certificate is given
8 as set forth in 75-20-213(1), including notice to all active
9 parties to the original proceeding, the department shall
10 determine whether the proposed change in the facility would
11 result in any a material increase in any environmental
12 impact of the facility or a substantial change in the
13 location of ~~all or a portion~~ OF ALL OR A PORTION of the
14 facility ~~other than as provided in the alternates~~ as set
15 forth in the original ~~application~~ CERTIFICATE. If the
16 department determines that the proposed change would result
17 in any a material increase in any environmental impact of
18 the facility or a substantial change in the location of all
19 or a portion of the facility, the board shall hold a hearing
20 in the same manner as a hearing is held on an application
21 for a certificate. After hearing, the board shall grant,
22 deny, or modify the amendment with such conditions as it
23 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 a material increase in any environmental impact or would
2 not be a substantial change in the location of ~~all or a~~
3 portion OF ALL OR A PORTION of the facility, the board shall
4 automatically grant the amendment either as applied for or
5 upon such terms or conditions as the board considers
6 appropriate unless the department's determination is
7 appealed to the board within 15 days after notice of the
8 department's determination is 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 a material increase in
12 any environmental impact of the facility or a substantial
13 change in the location of ~~all or a portion~~ OF ALL OR A
14 PORTION of the facility, the applicant has the burden of
15 showing by clear and convincing evidence that the amendment
16 should be granted.

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

1 material increase in any environmental impact of the
 2 facility or a substantial change in the location of all or a
 3 portion OF ALL OR A PORTION of the facility other than as
 4 provided in the alternates set forth in the original
 5 application AS SET FORTH IN THE CERTIFICATE.

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

12 Section 10, Section 75-20-220, MCA, is amended to
 13 read:

14 "75-20-220. Hearing examiner-----restrictions-----
 15 duties,--(i)--if--the--board--appoints--a--hearing--examiner--to
 16 conduct--any--certification--proceedings--under--this--chapter,
 17 the--hearing--examiner--may--not--be--a--member--of--the--board,
 18 an--employee--of--the--department,
 19 or--a--member--or--employee--of--the
 20 department--of--health--or--board--of--health. A hearing examiner,
 21 if--any,
 22 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
 department--of--health--shall--mutually--agree--on--the--appointment
 of--a--hearing--examiner--to--preside--at--both--hearings.

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

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

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

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

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

25 (7) Public witnesses and other interested public

1 parties may appear and present oral testimony at the hearing
 2 or submit written testimony to the hearing examiner at the
 3 time of their appearance. These witnesses are subject to
 4 cross-examination.

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

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

24 {10} The hearing examiner appointed to conduct a
 25 certification proceeding under this chapter shall insure

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

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

11 Section 11, Section 75-20-222, MCA, is amended to
 12 read:

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

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

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

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

12 Section 12, Section 75-20-225, MCA, is amended to
 13 read:

14 "75-20-225. Certificate renewal application
 15 contents filing fee. (1) Any certificate holder for a
 16 facility as defined in 75-20-104(10)(a)(i)(ii)(a)(i) may
 17 apply for renewal of a certificate prior to the certificate
 18 lapsing;

19 (2) An applicant for a renewal of a certificate shall
 20 file with the department and department of health a joint
 21 application in such form as the board requires by rule;

22 (3) An application for renewal of a certificate must
 23 include updated information on the matters listed in
 24 75-20-211(1)(a) that have changed since the original
 25 application and such other information as the board requires

1 by rule for certification. The matters listed in
 2 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
 3 locations must be updated only if the board determines that
 4 within the certified location significant changes have
 5 occurred to warrant a review of alternate locations;

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

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

14 (a) 0.125% of any estimated cost up to \$300 million;
 15 plus
 16 (b) 0.063% of any estimated cost over \$300 million."

17 Section 13, Section 75-20-226, MCA, is amended to
 18 read:

19 "75-20-226. Renewal study. (1) Upon receipt of a
 20 completed application for renewal of a certificate, the
 21 department shall evaluate the updated information and any
 22 significant changes, as applicable, in need, alternatives,
 23 technology, baseline environment, and the environmental
 24 impacts of a facility that have taken place since the
 25 original study performed in granting the certificate;

1 considering the applicable criteria listed in 75-20-301 and
2 75-20-503 and the original board findings and certificate
3 conditions;

4 (2) The department of health and the board of health,
5 within 10 months of acceptance of a complete renewal
6 application, shall complete the statutory duties established
7 in 75-20-216(3). A copy of any decision, opinion, order,
8 certification, or permit must be served on the department
9 and the board and must be used as part of their
10 decisionmaking process;

11 (3) Within 12 months following acceptance of a
12 complete application for renewal of a certificate, the
13 department shall make a report to the board. This report
14 must contain the department's studies, evaluations,
15 recommendations, and other pertinent documents resulting
16 from its study and evaluation and an updated environmental
17 impact statement or analysis, if any, pursuant to the
18 Montana Environmental Policy Act. The department's report
19 must be directed to the question of whether the original
20 board findings and conditions have been or need to be
21 altered as a result of any significant changes, as
22 applicable, in need, alternatives, technology, baseline
23 environment, or environmental impact since issuance of the
24 certificate, considering the applicable criteria listed in
25 75-20-301 and 75-20-503;

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

11 Section 14, Section 75-20-227, MCA, is amended to
12 read:

13 75-20-227. Certificate renewal hearing decision.
14 (1) The board shall follow the provisions of 75-20-210
15 through 75-20-222 in making decisions on certificate
16 renewals;

17 (2) Within 60 days after submission of the recommended
18 decision by the hearing examiner, the board shall make
19 complete findings, issue an opinion, and render a decision
20 upon the record, either granting or denying the renewal
21 application or renewing the certificate with such changes in
22 the terms and conditions as the board considers appropriate;

23 (3) The board may not renew a certificate either as
24 proposed by the applicant or as modified by the board unless
25 it finds and determines the criteria in 75-20-301 and

1 75-20-503, considering any significant changes, as
 2 applicable in need alternatives, technology, baseline
 3 environment, and environmental impact."

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;

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

19 (c) that the facility represents the minimum MINIMIZES
 20 adverse environmental impact, considering the state of
 21 available technology and ~~for facilities defined in~~
 22 ~~75-20-104(i)(b) and (i)(c)~~ the nature and ECONOMICS AND
 23 ECONOMICS of the various alternatives alternate locations
 24 VARIOUS ALTERNATIVES;

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

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

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

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

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

11 (f) that the location of the facility as proposed
 12 conforms to applicable state and local AND LOCAL laws and
 13 regulations issued thereunder, ~~except that the board may~~
 14 ~~refuse to apply any local law or regulation if it finds~~
 15 ~~that, as applied to the proposed facility, the law or~~
 16 ~~regulation is unreasonably restrictive in view of the~~
 17 ~~existing technology, of factors of cost or economics, or of~~
 18 ~~the needs of consumers, whether located inside or outside of~~
 19 ~~the directly affected government subdivisions, EXCEPT THAT~~
 20 THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF
 21 IT FINDS THAT, AS APPLIED TO THE PROPOSED FACILITY, THE LAW
 22 OR REGULATION IS UNREASONABLY RESTRICTIVE IN VIEW OF THE
 23 EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF
 24 THE NEEDS OF CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF
 25 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 defined in 75-20-104(11)(b) and~~
7 ~~(11)(c)~~ that the use of public lands for location of the
8 facility was evaluated and public lands were selected
9 whenever their use is as economically practicable as the use
10 of private lands and compatible with the environmental
11 criteria listed in 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;

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

23 (e) 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 16, Section 75-20-302, MCA, is amended to~~
3 ~~read:~~

4 ~~"75-20-302. Conditions imposed. (1) If the board~~
5 ~~determines that the location of all or a part of the a~~
6 ~~proposed facility defined in 75-20-104(11)(b) or (11)(c)~~
7 ~~should be modified, it may condition its certificate upon~~
8 ~~such modification, provided that the persons residing in the~~
9 ~~area affected by the modification have been given reasonable~~
10 ~~notice of the modification.~~

11 ~~(2) In making its findings under 75-20-301(2)(a) for a~~
12 ~~facility defined in 75-20-104(10)(a)(i)(11)(a)(i), the board~~
13 ~~may condition a certificate upon actual load growth reaching~~
14 ~~a specified level or on availability of other planned energy~~
15 ~~resources."~~

16 ~~Section 17, Section 75-20-303, MCA, is amended to~~
17 ~~read:~~

18 ~~"75-20-303. Opinion issued with decision. contents:~~
19 ~~(1) In rendering a decision on an application for a~~
20 ~~certificate, the board shall issue an opinion, stating its~~
21 ~~reasons for the action taken.~~

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

1 ~~{3}{2}~~ Any certificate issued by the board shall
 2 include the following:

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

6 ~~(i) the environmental impact of the proposed facility;~~
 7 ~~(ii) any adverse environmental effects which cannot be~~
 8 ~~avoided by issuance of the certificate;~~

9 ~~(iii) problems and objections raised by other federal~~
 10 ~~and state agencies and interested groups; and~~

11 ~~(iv) alternatives to the proposed facility;~~

12 ~~(b) a plan for monitoring environmental effects of the~~
 13 ~~proposed facility;~~

14 ~~(c) a plan for monitoring the certified facility site~~
 15 ~~between the time of certification and completion of~~
 16 ~~construction;~~

17 ~~(d) a time limit as provided in subsection (4) {3};~~
 18 and

19 ~~(e) a statement signed by the applicant showing~~
 20 ~~agreement to comply with the requirements of this chapter~~
 21 ~~and the conditions of the certificate.~~

22 ~~{4}{3} (a) The board shall issue as part of the~~
 23 ~~certificate the following time limits:~~

24 ~~(i) For a facility as defined in (b) or (c) of~~
 25 ~~75-20-104{10}{11}(b) or {11}(c) that is more than 30 miles~~

1 in length, construction must be completed within 10 years:

2 ~~(ii) For a facility as defined in (b) of~~
 3 ~~75-20-104{10}{11}(b) that is 30 miles or less in length,~~
 4 ~~construction must be completed within 5 years;~~

5 ~~(iii) For a facility as defined in (a) of 75-20-104{10}~~
 6 ~~{11}(a), construction must begin within 6 years and continue~~
 7 ~~with due diligence in accordance with preliminary~~
 8 ~~construction plans established in the certificate.~~

9 ~~(b) Unless extended or renewed in accordance with~~
 10 ~~subsection (4)(c) {3}{c} or 75-20-225 through 75-20-227, a~~
 11 ~~certificate lapses and is void if the facility is not~~
 12 ~~constructed or if construction of the facility is not~~
 13 ~~commenced within the time limits provided in this section.~~

14 ~~(c) The time limit may be extended for a reasonable~~
 15 ~~period upon a showing by the applicant to the board that a~~
 16 ~~good faith effort is being undertaken to complete~~
 17 ~~construction under subsections (4)(a)(i) subsection~~
 18 ~~{3}(a)(i) and (4)(a)(ii) or {3}(a)(ii) or to begin~~
 19 ~~construction under subsection (4)(a)(iii) {3}(a)(iii). Under~~
 20 ~~this subsection, a good faith effort includes the process of~~
 21 ~~acquiring any necessary state or federal permit or~~
 22 ~~certificate for the facility and the process of judicial~~
 23 ~~review of any such permit or certificate.~~

24 ~~{5}{4} The provisions of subsection (4) {3} apply to~~
 25 ~~any facility for which a certificate has not been issued or~~

1 ~~for-which-construction-is-yet-to-be-commenced-"~~

2 Section 6. Section 75-20-304, MCA, is amended to 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 subject to this chapter that a facility or
15 associated facility has been damaged or destroyed as a
16 result of fire, flood, or other natural disaster or as the
17 result of insurrection, war, or other civil disorder and
18 there exists an immediate need for construction of a new
19 facility or associated facility or the relocation of a
20 previously existing facility or associated facility in order
21 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~~2~~ and AND 75-20-501(5)~~2~~ and ~~the requirements of~~
25 ~~subsections--(1)(a)(iv)--and--(v)--of~~ THE REQUIREMENTS OF

1 SUBSECTIONS (1)(A)(IV) AND (V) OF 75-20-211(1)(a)(iv),
2 75-20-216(3), AND 75-20-303(3)(A)(IV)~~7--75-20-216(3)7--and~~
3 ~~75-20-303(3)(a)(iv)~~ relating to consideration of alternative
4 sites if the applicant makes a clear and convincing showing
5 to the board at a public hearing that:

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

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

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

17 (d) the proposed facility will have a beneficial
18 effect on the economy of the county in which the facility is
19 proposed to be located.

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

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

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

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

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

22 ~~Section 19, Section 75-20-402, MCA, is amended to~~
 23 ~~read:~~

24 ~~"75-20-402, Monitoring, The board, the department,~~
 25 ~~the department of health, and the board of health shall~~

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

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

13 ~~"75-20-403, Revocation or suspension of certificate:~~
 14 ~~Following notice and an opportunity for a hearing, a~~
 15 ~~certificate may be revoked or suspended by the board:~~

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 21, 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-22,--Section--75-20-501,--NCA,--is--amended--to
13 read:

14 "75-20-501,--Annual--long-range--plan---submitted-----
15 contents-----available-to-public:--(1) Each-utility-and-each
16 person-contemplating-the-construction-of-a--facility--within
17 this-state-in-the-ensuing-10-years-shall-furnish-annually-to
18 the--department--for--its--review--a-long-range-plan-for-the
19 construction-and-operation-of-facilities;

20 (2)--The-plan-shall-be-submitted-by-July-1-of-each-year
21 and-must-include-the-following:

22 (a)--the--general--location,--size,--and--type--of--all
23 facilities-to-be-owned-and-operated-by-the-utility-or-person
24 whose when construction-is-projected-to-commence-during-the
25 ensuing-10-years,--as-well-as-those-facilities-to-be--removed

1 from-service-during-the-planning-period;

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

7 (c)--a--description---of---the---efforts---to--involve
8 environmental-protection-and-land-use-planning--agencies--in
9 the--planning--process,--as-well-as-other-efforts-to-identify
10 and-minimize-environmental-problems-at-the-earliest-possible
11 stage-in-the-planning-process;

12 (d)--projections-of-the-demand-for-the-service-rendered
13 by-the a-utility-or-person-and-explanation-of-the-basis--for
14 those-projections-and-a-description-of-the-manner-and-extent
15 to-which--the--proposed--facilities-will-meet-the-projected
16 demand;-and

17 (e)--additional-information-that-the-board-by--rule--or
18 the--department--on-its-own-initiative-or-upon-the-advice-of
19 interested-state-agencies-might-request requests in-order-to
20 carry-out-the-purposes-of-this-chapter;

21 (3)--The-plan-shall-be-furnished-to-the-governing--body
22 of--each--county--in-which-any-facility-included-in-the-plan
23 under-(2)(a)-of-this-section-is-proposed-to-be--located--and
24 made--available-to-the-public-by-the-department.-The-utility
25 or-person-shall-give-public-notice-throughout-the--state--of

1 its plan by filing the plan with the environmental quality
 2 council; the department of health and environmental
 3 sciences; the department of highways; the department of
 4 public service regulation; the department of state lands;
 5 the department of fish, wildlife, and parks; and the
 6 department of commerce. Citizen environmental protection and
 7 resource planning groups and other interested Interested
 8 persons may obtain a plan by written request and payment
 9 therefor to the department.

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

15 (5) No person may file an application for a facility
 16 unless the facility had been was adequately identified in a
 17 long-range plan at least 2 years prior to acceptance of an
 18 application by the department, except for electric
 19 transmission lines of a design capacity of 230 kilovolts or
 20 less."

21 Section 23, Section 75-20-502, MCA, is amended to
 22 read:

23 "75-20-502. Study of included facilities. If a
 24 utility or person lists and identifies a proposed facility
 25 in its the plan, submitted pursuant to 75-20-501, as one on

1 which construction is proposed to be commenced within the
 2 5-year period following submission of the plan, the
 3 department shall commence examination and evaluation of the
 4 proposed site to determine whether construction of the
 5 proposed facility would unduly impair the environmental
 6 values in 75-20-503. This study may be continued until such
 7 time as a person files an application for a certificate
 8 under 75-20-211. Information gathered under this section may
 9 be used to support findings and recommendations required for
 10 issuance of a certificate."

11 Section 24, Section 75-20-503, MCA, is amended to
 12 read:

13 "75-20-503. Environmental factors evaluated. In
 14 evaluating long-range plans, conducting 5-year site reviews,
 15 and evaluating applications for certificates, the board and
 16 department shall give consideration to the following list of
 17 environmental factors, where applicable, and may by rule add
 18 to the categories of this section:

19 (1) energy needs: requirements;

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

21 (b) availability and desirability of alternative
 22 sources of energy;

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

25 (d) promotional activities of the utility which may

1 have-given-rise-to-the-need-for-this-facility;

2 {e}--socially-beneficial-uses-of-the-output-of-this

3 facility,--including--its--uses--to--protect--or--enhance

4 environmental-quality;

5 {f}--conservation-activities--which--could--reduce--the

6 need-for-more-energy;

7 {g}--research--activities--of--the--utility--of--new

8 technology--available--to--it--which--might--minimize

9 environmental-impact;

10 {2}--land-use-impacts:

11 {a}--area-of-land-required-and-ultimate-user;

12 {b}--consistency--with--areawide-state-and-regional-land

13 use-plans;

14 {c}--consistency-with--existing--and--projected--nearby

15 land-user;

16 {d}--alternative-uses-of-the-site;

17 {e}--impact--on--population--already--in--the--area,

18 population-attracted-by-construction--or--operation--of--the

19 facility-itself;

20 {f}--impact--of--availability--of--energy--from--this

21 facility-on-growth-patterns-and-population-dispersal;

22 {g}--geologic-suitability-of-the-site-or-route;

23 {h}--seismologic-characteristics;

24 {i}--construction-practices;

25 {j}--extent-of-erosion,scouring,wasting-of-land,both

1 at-site-and-as-a-result--of--fossil-fuel--demands--of--the

2 facility;

3 {k}--corridor--design--and--construction-precautions-for

4 transmission-lines-or-aqueducts;

5 {l}--scenic-impacts;

6 {m}--effects-on-natural-systems,wildlife,plant-life,

7 {n}--impacts--on--important--historic--architectural,

8 archeological,and-cultural-areas-and-features;

9 {o}--extent-of--recreation--opportunities--and--related

10 compatible-uses;

11 {p}--public-recreation-plan-for-the-project;

12 {q}--public-facilities-and-accommodation;

13 {r}--opportunities--for--joint-use-with-energy-intensive

14 industries-or-other-activities-to-utilize--the--waste--heat

15 from-facilities;

16 {s}--for--facilities--defined--in--75-20-104(11)(b) and

17 (11)(c), opportunities-for-using-public-lands--for--location

18 of--facilities--whenever--as-economically-practicable-as-the

19 use-of-private-lands-and-compatible-with-the-requirements-of

20 this-section;

21 {3}--water-resources-impacts:

22 {a}--hydrologic-studies-of-adequacy-of-water-supply-and

23 impact-of-facility-on-streamflow,lakes,and-reservoirs;

24 {b}--hydrologic-studies--of--impact--of--facilities--on

25 groundwater;

1 {c)--cooling-system-evaluation,-including-consideration
 2 of-alternatives;
 3 {d)--inventory---of---effluents,-including-physical,
 4 chemical,-biological,-and-radiological-characteristics;
 5 {e)--hydrologic-studies--of--effects--of--effluents--on
 6 receiving--waters,-including--mixing--characteristics--of
 7 receiving-waters,-changed--evaporation--due--to--temperature
 8 differentials,-and-effect-of-discharge-on-bottom-sediments;
 9 {f)--relationship-to-water-quality-standards;
 10 {g)--effects-of-changes--in--quantity--and--quality--on
 11 water--use--by--others,-including-both-withdrawal-and-in-situ
 12 uses;
 13 {h)--relationship-to-projected-uses;
 14 {i)--relationship-to-water-rights;
 15 {j)--effects-on-plant-and-animal-life,-including-algae,
 16 macroinvertebrates,-and-fish-population;
 17 {k)--effects--on--unique---or---otherwise---significant
 18 ecosystems,-e.g.,-wetlands;
 19 {l)--monitoring-programs;
 20 {4)--air-quality-impacts;
 21 {a)--meteorology--wind--direction-and-velocity,-ambient
 22 temperature---ranges,-precipitation---values,-inversion
 23 occurrence,-other-effects-on-dispersion;
 24 {b)--topography--factors-affecting-dispersion;
 25 {c)--standards--in--effect-and-projected-for-emissions;

1 {d)--design-capability-to-meet-standards;
 2 {e)--emissions-and-controls:
 3 {i)--stack-design;
 4 {ii)-particulates;
 5 {iii)-sulfur-oxides;
 6 {iv)-oxides-of-nitrogen;-and
 7 {v)--heavy---metals,-trace---elements,-radioactive
 8 materials,-and-other-toxic-substances;
 9 {f)--relationship--to-present-and-projected-air-quality
 10 of-the-area;
 11 {g)--monitoring-program;
 12 {5)--solid-wastes-impacts:
 13 {a)--solid-waste-inventory;
 14 {b)--disposal-program;
 15 {c)--relationship---of---disposal---practices---to
 16 environmental-quality-criteria;
 17 {d)--capacity--of--disposal--sites--to-accept-projected
 18 waste-loadings;
 19 {6)--radiation-impacts:
 20 {a)--land-use-controls-over-development-and-population;
 21 {b)--wastes-and-associated-disposal-program-for--solid,
 22 liquid,-radioactive,-and-gaseous-wastes;
 23 {c)--analyses---and---studies---of---the---adequacy--of
 24 engineering-safeguards-and-operating-procedures;
 25 {d)--monitoring--adequacy--of--devices--and--sampling

1 techniques;

2 (7)--noise impacts;

3 (a)--construction-period levels;

4 (b)--operational levels;

5 (c)--relationship-of-present-and-projected-noise-levels

6 to-existing-and-potential-strictier-noise-standards;

7 (d)--monitoring--adequacy-of-devices-and-methods;"

8 Section-25--Section--75-20-1202,--MCA,--is--amended-to

9 read:

10 "75-20-1202--Definitions--As-used-in--this--part--and

11 75-20-201---through--75-20-203,--the--following--definitions

12 apply:

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

14 other-facility-designed-for-or-capable-of:

15 (i)--generating--50-megawatts-of-electricity-or-more-by

16 means-of-nuclear-fission;

17 (ii)--converting,----enriching,----fabricating,----or

18 reprocessing-uranium-minerals-or-nuclear-fuels;-or

19 (iii)--storing--or--disposing--of--radioactive-wastes-or

20 materials-From-a-nuclear-facility;

21 (b)--"Nuclear---facility"---does---not---include---any

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

23 or--medical--purposes--not--connected--with--the--commercial

24 generation-of-energy;

25 (2)--"Facility"--as--defined--in-75-20-104(10)(11),--is

1 further-defined-to-include-any-nuclear-facility--as--defined

2 in-subsection-(1)(a)-of-this-section;"

3 Section 7. Section 75-20-1205, MCA, is amended to

4 read:

5 "75-20-1205. Emergency approval authority invalid for

6 nuclear facilities. Notwithstanding the provisions of

7 subsections-(2)-and-(3)-of 75-20-304(2) AND (3), the board

8 may not waive compliance with any of the provisions of this

9 part or 75-20-201 through 75-20-203 relating to

10 certification of a nuclear facility."

11 NEW SECTION. Section 8. Extension of authority. Any

12 existing authority of the board of natural resources and

13 conservation, the board of health and environmental

14 sciences, and the department of health and environmental

15 sciences to make rules on the subject of the provisions of

16 this act is extended to the provisions of this act.

17 NEW SECTION. Section 9. Effective date. This act is

18 effective on passage and approval.

-End-

1 **STATEMENT OF INTENT**

2 **SENATE BILL 292**

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

A statement of intent is required for this bill in order to provide guidance to the board of natural resources and conservation concerning the board's authority to make rules on the provisions of the Montana Major Facility Siting Act that are affected by this bill.

Section 5 amends the board's decision standard concerning adverse environmental impact. The term "minimizes" is substituted for the existing qualifying phrase "represents the minimum". This amendment is consistent with the historical practice and interpretation of the board in carrying out its functions under the siting act. It is the intent of the legislature that the board's rules and regulations in effect at the time of the enactment of this bill represent reasonable rules implementing and interpreting the decision standard as amended by this bill.

REFERENCE BILL
SB 292



SENATE BILL NO. 292

INTRODUCED BY KEATING, GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT; DEFINING COST; ELIMINATING BASELINE STUDIES OF ALTERNATIVE SITES FROM CONSIDERATION; REDUCING THE TIME ALLOWED FOR STUDIES AND DECISIONMAKING; AMENDING SECTIONS 75-20-104, 75-20-105, 75-20-202, 75-20-205, 75-20-211, 75-20-213, 75-20-216, 75-20-217, 75-20-219, 75-20-220, 75-20-222, 75-20-225 THROUGH 75-20-227, 75-20-301 THROUGH 75-20-304, 75-20-402, 75-20-403, 75-20-405, 75-20-501 THROUGH 75-20-503, 75-20-1202, ELIMINATE BASELINE STUDIES OF ALTERNATIVE SITES FOR ENERGY GENERATION AND CONVERSION FACILITIES FROM THE MONTANA MAJOR FACILITY SITING ACT; TO CLARIFY RULEMAKING AUTHORITY OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 75-20-105, 75-20-211, 75-20-216, 75-20-219, 75-20-301, 75-20-304, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"75-20-104. Definitions. In this chapter, unless the 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 the rules adopted hereunder;

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, 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 or a natural gas or crude oil gathering line 17 inches or less in inside diameter;

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

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

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

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site

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

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

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

15 (d) the relocation or upgrading of an existing
 16 facility defined by (b) or (c) of subsection (10) (11)(b) or
 17 (11)(c), including upgrading to a design capacity covered by
 18 subsection (10)(b) (11)(b), except that the term does not
 19 include normal maintenance or repair of an existing
 20 facility;

21 (8) "Cost" means the estimated cost in dollars at the
 22 time of proposed construction of a facility or associated
 23 facility located in Montana;

24 (8)(9) "Department" means the department of natural
 25 resources and conservation provided for in Title 2, chapter

1 15, part 33;

2 (9)(10) "Department of health" means the department of
 3 health and environmental sciences provided for in Title 2,
 4 chapter 15, part 21;

5 (10)(11) "Facility" means:

6 (a) except for crude oil and natural gas refineries
 7 and those facilities subject to The Montana Strip and
 8 Underground Mine Reclamation Act, each plant, unit, or other
 9 facility and associated facilities designed for or capable
 10 of:

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

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

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

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

25 (v) utilizing or converting 500,000 tons of coal per

1 year--or--more--or--any--addition--thereto--having--an--estimated
2 cost--in--excess--of--\$10--million;

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

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

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

18 (e)--any--underground--in-situ--gasification--of--coal;

19 (11)(12)--"Person"--means--any--individual,--group,--firm,
20 partnership,--corporation,--cooperative,--association,
21 government--subdivision,--government--agency,--local--government,
22 or--other--organization--or--entity;

23 (12)(13)--"Transmission--substation"--means--any--structure,
24 device,--or--equipment--assemblage,--commonly--located--and
25 designed--for--voltage--regulation,--circuit--protection,--or

1 switching--necessary--for--the--construction--or--operation--of--a
2 proposed--transmission--line;

3 (13)(14)--"Utility"--means--any--person--engaged--in--any
4 aspect--of--the--production,--storage,--sale,--delivery,--or
5 furnishing--of--heat,--electricity,--gas,--hydrocarbon--products,
6 or--energy--in--any--form--for--ultimate--public--use."

7 Section 1. Section 75-20-105, MCA, is amended to read:
8 "75-20-105. Adoption of rules. The board may adopt
9 rules implementing the provisions of this chapter, including
10 but not limited to:

11 (1)--rules--governing--the--form--and--content--of
12 applications;

13 (2)--rules--further--defining--the--terms--used--in--this
14 chapter;

15 (3)--rules--governing--the--form--and--content--of--long--range
16 plans;

17 (4)--any--other--rules--the--board--considers--necessary--to
18 accomplish--the--purposes--and--objectives--of--this--chapter."

19 Section 3. Section 75-20-202, MCA, is amended to read:
20 "75-20-202. Exemptions. (1) A certificate is not
21 required under this chapter for a facility under diligent
22 onsite physical construction or in operation on January 1,
23 1993.

24 (2) The board may adopt reasonable rules establishing
25 exemptions from this chapter for the relocation,

1 reconstruction, or upgrading of a facility that,

2 (a) would otherwise be covered by this chapter, and

3 (b) (i) is unlikely to have a significant

4 environmental impact by reason of length, size, location,

5 available space or right-of-way, or construction methods, or

6 (ii) utilizes coal, wood, biomass, grain, wind, or sun

7 as a fuel source and the technology of which will result in

8 greater efficiency, promote energy conservation, and promote

9 greater system reliability than the existing facility.

10 (3) A person proposing to construct an exempt facility

11 shall pay to the department reasonable costs, if any,

12 incurred by the department in processing the exemption.

13 (4) This chapter does not apply to a facility defined

14 in 75-20-104(10)(c)(i)(c) that has been designated by the

15 governor for environmental review by an executive agency of

16 the state for the purpose of complying with Title 75,

17 chapter 17 pursuant to Executive Order 4-81 and prior to

18 July 1, 1985."

19 Section 4, Section 75-20-205, MCA, is amended to read:

20 "75-20-205. Centerline location. (1) For all

21 facilities defined in 75-20-104(10)(b)(i)(b) and

22 (10)(c)(i)(c) and associated facilities certified under

23 this chapter, the board shall condition the certificate upon

24 board approval of a final centerline location.

25 (2) The final centerline location must be determined

1 in a noncontested case proceeding before the board after the

2 submission of a centerline location report by the

3 department.

4 (3) The department shall consult with the certificate

5 holder and the affected landowners prior to making its

6 report.

7 (4) The department's report must be prepared

8 considering the criteria set forth in 75-20-301 and

9 75-20-503 and the findings of fact and conclusions of law

10 set out in the board decision.

11 (5) The department report may be completed on segments

12 of a certified facility as is convenient to the certificate

13 holder.

14 (6) The certificate holder shall initiate the final

15 centerline location approval process by submitting a

16 proposed centerline location plan to the department. The

17 certificate holder shall pay to the department the actual

18 costs incurred in processing a final centerline location not

19 to exceed 25% of the filing fee paid under 75-20-215."

20 Section 2. Section 75-20-211, MCA, is amended to read:

21 "75-20-211. Application -- Filing and contents --

22 proof of service and notice. (1) (a) An applicant shall file

23 with the department and department of health a joint

24 application for a certificate under this chapter and for the

25 permits required under the laws administered by the

1 department of health and the board of health in such form as
2 the board requires under applicable rules, containing the
3 following information:

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

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

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

9 (iv) for facilities defined in 75-20-104(b) and
10 (c) (10)(B) AND (10)(C), a description of reasonable
11 alternate locations ~~for--the--proposed--facility~~ FOR THE
12 FACILITY, a general description of the comparative merits
13 and detriments of each location submitted, and a statement
14 of the reasons why the primary proposed location is best
15 suited for the facility;

16 (v) FOR FACILITIES AS DEFINED IN 75-20-104(10)(B) AND
17 (10)(C), baseline data for the ~~primary--and--reasonable~~
18 ~~alternate--locations~~ proposed--location PRIMARY AND REASONABLE
19 ALTERNATE LOCATIONS, OR FOR FACILITIES AS DEFINED IN
20 75-20-104(10)(A), (10)(D), AND (10)(E), BASELINE DATA FOR
21 THE PROPOSED LOCATION AND, AT THE APPLICANT'S OPTION, ANY
22 ALTERNATIVE LOCATIONS ACCEPTABLE TO THE APPLICANT FOR SITING
23 THE FACILITY;

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

1 (vii) such other relevant information as the applicant
2 ~~considers-relevant~~ submits CONSIDERS RELEVANT or as the
3 board and board of health by order or rule or the department
4 and 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~~ is proposed OR IS ALTERNATIVELY
20 PROPOSED to be located, ~~---both--as--primarily--and--as~~
21 ~~alternatively-proposed~~ and on the following state government
22 agencies:

23 (a) environmental quality council;

24 (b) department of public service regulation;

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

- 1 (d) department of state lands;
- 2 (e) department of commerce;
- 3 (f) department of highways;
- 4 (g) department of revenue.

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

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

15 ~~Section 6. Section 75-20-213, MCA, is amended to read:~~
 16 ~~"75-20-213. Supplemental material --- amendments. --- (1)~~
 17 ~~An application for an amendment of an application or a~~
 18 ~~certificate shall be in such form and contain such~~
 19 ~~information as the board by rule or the department by order~~
 20 ~~prescribes. Notice of such an application shall be given as~~
 21 ~~set forth in subsections (3), (4), and (5) of 75-20-211.~~

22 ~~(2) An application may be amended by an applicant any~~
 23 ~~time prior to the department's recommendation, if the~~
 24 ~~proposed amendment is such that it prevents the department,~~
 25 ~~the department of health, or the agencies listed in~~

1 ~~75-20-216(5) --- from --- carrying --- out --- their --- duties --- and~~
 2 ~~responsibilities under this chapter, the department may~~
 3 ~~require such additional filing fees as the department~~
 4 ~~determines it demonstrates to the applicant as necessary, or~~
 5 ~~the department may require a new application and filing fee.~~
 6 ~~(3) The applicant shall submit supplemental material~~
 7 ~~in a timely manner as requested by the department or as~~
 8 ~~offered by the applicant to explain, support, or provide the~~
 9 ~~detail with respect to an item described in the original~~
 10 ~~application, without filing an application for an amendment.~~
 11 ~~The department's determination as to whether information is~~
 12 ~~supplemental or whether an application for amendment is~~
 13 ~~required shall be conclusive."~~

14 Section 3. Section 75-20-216, MCA, is amended to read:

15 "75-20-216. Study, evaluation, and report on proposed
 16 facility -- assistance by other agencies. (1) After receipt
 17 of an application, the department and department of health
 18 shall within 90 days notify the applicant in writing that:

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

21 (b) the application is not in compliance and list the
 22 deficiencies therein; and upon correction of these
 23 deficiencies and resubmission by the applicant, the
 24 department and department of health shall within 30 days
 25 notify the applicant in writing that the application is in

1 compliance and is accepted as complete.

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

14 (3) The department of health ~~and the board of health~~
15 shall within 1 year following the date of acceptance of an
16 application and the board of health or department of
17 health, if applicable, within an additional 6 months AND THE
18 BOARD OF HEALTH OR DEPARTMENT OF HEALTH, IF APPLICABLE,
19 WITHIN AN ADDITIONAL 6 MONTHS, issue any decision, opinion,
20 order, certification, or permit required under the laws
21 administered by the department of health or the board of
22 health and this chapter. The department of health and the
23 board of health shall determine compliance with all
24 standards, permit requirements, and implementation plans
25 under their jurisdiction for the ~~primary and reasonable~~

1 ~~alternate locations~~ proposed location OR ANY PROPOSED
2 ALTERNATE LOCATION in their decision, opinion, order,
3 certification, or permit. The decision, opinion, order,
4 certification, or permit, with or without conditions, is
5 conclusive on all matters that the department of health and
6 board of health administer, and any of the criteria
7 specified in subsections (2) through (7) of 75-20-503 that
8 are a part of the determinations made under the laws
9 administered by the department of health and the board of
10 health. Although the decision, opinion, order,
11 certification, or permit issued under this subsection is
12 conclusive, the board retains authority to make the
13 determination required under 75-20-301~~(2)(b)~~ and (2)(c). The
14 decision, opinion, order, certification, or permit of the
15 department of health or the board of health satisfies the
16 review requirements by those agencies and shall be
17 acceptable in lieu of an environmental impact statement
18 under the Montana Environmental Policy Act. A copy of the
19 decision, opinion, order, certification, or permit shall be
20 served upon the department and the board ~~and shall be~~
21 ~~utilized as part of their final site selection process~~ AND
22 SHALL BE UTILIZED AS PART OF THEIR FINAL SITE SELECTION
23 PROCESS. Prior to the issuance of a preliminary decision by
24 the department of health and pursuant to rules adopted by
25 the board of health, the department of health shall provide

1 an opportunity for public review and comment.

2 (4) Within ~~22 months~~ 1 year 22 MONTHS following

3 acceptance of an application for a facility as defined in

4 ~~(a) and (d) of 75-20-104(10)(11)~~ and for a facility as

5 defined in (b) and (c) of 75-20-104(10) which is more than

6 30 miles in length and within 1 year for a facility as

7 defined in (b) and (c) of 75-20-104(10) which is 30 miles or

8 less in length (A) AND (D) OF 75-20-104(10) AND FOR A

9 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

10 MORE THAN 30 MILES IN LENGTH, AND WITHIN 1 YEAR FOR A

11 FACILITY AS DEFINED IN (B) AND (C) OF 75-20-104(10) WHICH IS

12 30 MILES OR LESS IN LENGTH, the department shall make a

13 report to the board which shall contain the department's

14 studies, evaluations, recommendations, RECOMMENDATIONS,

15 other pertinent documents resulting from its study and

16 evaluation, and an environmental impact statement or

17 analysis, if any, prepared pursuant to the Montana

18 Environmental Policy Act, if any. If the application is for

19 a combination of two or more facilities, the department

20 shall make its report to the board within the greater of the

21 lengths of time provided for in this subsection for either

22 of the facilities, IF ANY. IF THE APPLICATION IS FOR A

23 COMBINATION OF TWO OR MORE FACILITIES, THE DEPARTMENT SHALL

24 MAKE ITS REPORT TO THE BOARD WITHIN THE GREATER OF THE

25 LENGTHS OF TIME PROVIDED FOR IN THIS SUBSECTION FOR EITHER

1 OF THE FACILITIES.

2 (5) The departments of highways; commerce; fish,

3 wildlife, and parks; state lands; revenue; and public

4 service regulation shall report to the department

5 information relating to the impact of the proposed site on

6 each department's area of expertise. ~~The report may include~~

7 ~~opinions as to the advisability of granting, denying, or~~

8 ~~modifying the certificate. THE REPORT MAY INCLUDE OPINIONS~~

9 ~~AS TO THE ADVISABILITY OF GRANTING, DENYING, OR MODIFYING~~

10 ~~THE CERTIFICATE.~~ The department shall allocate funds

11 obtained from filing fees to the departments making reports

12 to reimburse them for the costs of compiling information and

13 issuing the required report."

14 ~~Section 8, Section 75-20-217, MCA, is amended to read:~~

15 ~~"75-20-217. Voiding an application. (1) Upon request,~~

16 ~~an applicant is entitled to notice and a hearing as provided~~

17 ~~in 2-4-601 and 2-4-604 if the department proposes to void an~~

18 ~~application.~~

19 ~~(2) An~~ Following the hearing provided for in

20 subsection (1), an application may be voided by the

21 department for:

22 ~~(1)(a) any material and knowingly false statement in~~

23 ~~the application or in accompanying statements or studies~~

24 ~~required of the applicant;~~

25 ~~(2)(b) failure to file an application in substantially~~

1 ~~the--form-and-content-required-by-this-chapter-and-the-rules~~
 2 ~~adopted-thereunder; or~~

3 ~~(3)(c)--failure-to-deposit-the-filing-fee--as--provided~~
 4 ~~in-75-20-215."~~

5 Section 4. Section 75-20-219, MCA, is amended to read:

6 "75-20-219. Amendments to a certificate. (1) Within 30
 7 days after notice of an amendment to a certificate is given
 8 as set forth in 75-20-213(1), including notice to all active
 9 parties to the original proceeding, the department shall
 10 determine whether the proposed change in the facility would
 11 result in any a material increase in any environmental
 12 impact of the facility or a substantial change in the
 13 location ~~of--all--or--a--portion~~ OF ALL OR A PORTION of the
 14 facility ~~other--than--as--provided-in-the-alternates~~ as set
 15 forth in the ~~original--application~~ CERTIFICATE. If the
 16 department determines that the proposed change would result
 17 in any a material increase in any environmental impact of
 18 the facility or a substantial change in the location of all
 19 or a portion of the facility, the board shall hold a hearing
 20 in the same manner as a hearing is held on an application
 21 for a certificate. After hearing, the board shall grant,
 22 deny, or modify the amendment with such conditions as it
 23 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 a material increase in any environmental impact or would
 2 not be a substantial change in the location ~~of--all--or--a~~
 3 portion OF ALL OR A PORTION of the facility, the board shall
 4 automatically grant the amendment either as applied for or
 5 upon such terms or conditions as the board considers
 6 appropriate unless the department's determination is
 7 appealed to the board within 15 days after notice of the
 8 department's determination is 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 a material increase in
 12 any environmental impact of the facility or a substantial
 13 change in the location ~~of--all--or--a--portion~~ OF ALL OR A
 14 PORTION of the facility, the applicant has the burden of
 15 showing by clear and convincing evidence that the amendment
 16 should be granted.

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

1 material increase in any environmental impact of the
 2 facility or a substantial change in the location of all or a
 3 portion OF ALL OR A PORTION of the facility other than as
 4 provided in the alternates set forth in the original
 5 application AS SET FORTH IN THE CERTIFICATE.

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

12 Section 10, Section 75-20-220, NCA, is amended to
 13 read:

14 "75-20-220. Hearing examiner ----- restrictions -----
 15 duties. (i) If the board appoints a hearing examiner to
 16 conduct any certification proceedings under this chapter,
 17 the hearing examiner may not be a member of the board, an
 18 employee of the department, or a member or employee of the
 19 department of health or board of health. A hearing examiner,
 20 if any, shall be appointed by the board within 20 days after
 21 the department's report has been filed with the board. If a
 22 hearing is held before the board of health or the department
 23 of health, the board and the board of health or the
 24 department of health shall mutually agree on the appointment
 25 of a hearing examiner to preside at both hearings.

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

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

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

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

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

25 (7) Public witnesses and other interested public

1 parties may appear and present oral testimony at the hearing
2 or submit written testimony to the hearing examiner at the
3 time of their appearance. These witnesses are subject to
4 cross-examination.

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

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

24 (10) The hearing examiner appointed to conduct a
25 certification proceeding under this chapter shall insure

1 that the time of the proceeding, from the date the
2 department's report is filed with the board until the
3 recommended report and order of the examiner is filed with
4 the board, does not exceed 90 calendar months unless
5 extended by the board for good cause.

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

11 Section 11, Section 75-20-222, MCA, is amended to
12 read:

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

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

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

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

12 Section 12, Section 75-20-225, MCA, is amended to
 13 read:

14 "75-20-225. Certificate renewal application
 15 contents filing fee. (1) Any certificate holder for a
 16 facility as defined in 75-20-104(10)(a)(i)(11)(a)(i) may
 17 apply for renewal of a certificate prior to the certificate
 18 lapsing.

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

22 (3) An application for renewal of a certificate must
 23 include updated information on the matters listed in
 24 75-20-211(1)(a) that have changed since the original
 25 application and such other information as the board requires

1 by rule for certification. The matters listed in
 2 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
 3 locations must be updated only if the board determines that
 4 within the certified location significant changes have
 5 occurred to warrant a review of alternate locations.

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

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

- 14 (a) 0.125% of any estimated cost up to \$300 million;
- 15 plus
- 16 (b) 0.063% of any estimated cost over \$300 million."

17 Section 13, Section 75-20-226, MCA, is amended to
 18 read:

19 "75-20-226. Renewal study. (1) Upon receipt of a
 20 completed application for renewal of a certificate, the
 21 department shall evaluate the updated information and any
 22 significant changes, as applicable, in need, alternatives,
 23 technology, baseline environment, and the environmental
 24 impacts of a facility that have taken place since the
 25 original study performed in granting the certificate,

1 considering the applicable criteria listed in 75-20-301 and
2 75-20-503 and the original board findings and certificate
3 conditions:

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

11 (3) Within 12 months following acceptance of a
12 complete application for renewal of a certificate, the
13 department shall make a report to the board. This report
14 must contain the department's studies, evaluations,
15 recommendations, and other pertinent documents resulting
16 from its study and evaluation and an updated environmental
17 impact statement or analysis, if any, pursuant to the
18 Montana Environmental Policy Act. The department's report
19 must be directed to the question of whether the original
20 board findings and conditions have been or need to be
21 altered as a result of any significant changes, as
22 applicable, in need, alternatives, technology, baseline
23 environment, or environmental impact since issuance of the
24 certificate, considering the applicable criteria listed in
25 75-20-301 and 75-20-503.

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

11 Section 14, Section 75-20-227, MEA, is amended to
12 read:

13 "75-20-227. Certificate renewal hearing decision.
14 (1) The board shall follow the provisions of 75-20-210
15 through 75-20-222 in making decisions on certificate
16 renewals.

17 (2) Within 60 days after submission of the recommended
18 decision by the hearing examiner, the board shall make
19 complete findings, issue an opinion, and render a decision
20 upon the record, either granting or denying the renewal
21 application or renewing the certificate with such changes in
22 the terms and conditions as the board considers appropriate.

23 (3) The board may not renew a certificate either as
24 proposed by the applicant or as modified by the board unless
25 it finds and determines the criteria in 75-20-301 and

1 ~~75-20-503,---considering---any---significant---changes,---as~~
 2 ~~applicable, in--need,--alternatives,--technology,--baseline~~
 3 ~~environment,--and--environmental--impact."~~

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;
 18 (b) the nature of the probable environmental impact;
 19 (c) that the facility ~~represents the minimum~~ MINIMIZES
 20 adverse environmental impact, considering the state of
 21 available technology and,---for--facilities--defined--in
 22 75-20-104(1)(b) and (1)(c), the nature and--economics AND
 23 ECONOMICS of the various-alternatives alternate-locations
 24 VARIOUS ALTERNATIVES;

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

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

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

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

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

11 (f) that the location of the facility as proposed
 12 conforms to applicable state ~~and local~~ AND LOCAL laws and
 13 regulations issued thereunder, ~~except that the board may~~
 14 ~~refuse to apply any local law or regulation if it finds~~
 15 ~~that, as applied to the proposed facility, the law or~~
 16 ~~regulation is unreasonably restrictive in view of the~~
 17 ~~existing technology, of factors of cost or economics, or of~~
 18 ~~the needs of consumers, whether located inside or outside of~~
 19 ~~the directly affected government subdivisions, EXCEPT THAT~~
 20 THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF
 21 IT FINDS THAT, AS APPLIED TO THE PROPOSED FACILITY, THE LAW
 22 OR REGULATION IS UNREASONABLY RESTRICTIVE IN VIEW OF THE
 23 EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF
 24 THE NEEDS OF CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF
 25 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 defined in 75-20-104(1)(b) and~~
7 ~~(1)(c)~~ that the use of public lands for location of the
8 facility was evaluated and public lands were selected
9 whenever their use is as economically practicable as the use
10 of private lands and compatible with the environmental
11 criteria listed in 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;

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

23 (e) 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 16, Section 75-20-302, MEA, is amended to
3 read:

4 "75-20-302--Conditions--imposed:--(1)--If--the--board
5 determines--that--the--location--of--all--or--a--part--of--the--a
6 proposed--facility--defined--in--75-20-104(1)(b) or (1)(c)
7 should--be--modified,--it--may--condition--its--certificate--upon
8 such--modification,--provided--that--the--persons--residing--in--the
9 area--affected--by--the--modification--have--been--given--reasonable
10 notice--of--the--modification.

11 (2)--In--making--its--findings--under--75-20-301(2)(a)--for--a
12 facility--defined--in--75-20-104(10)(a)(i)(1)(a)(i),--the--board
13 may--condition--a--certificate--upon--actual--load--growth--reaching
14 a--specified--level--or--on--availability--of--other--planned--energy
15 resources."

16 Section 17, Section 75-20-303, MEA, is amended to
17 read:

18 "75-20-303--Opinion--issued--with--decision----contents.
19 (1)--In--rendering--a--decision--on--an--application--for--a
20 certificate,--the--board--shall--issue--an--opinion, stating--its
21 reasons--for--the--action--taken.

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

1 ~~{3}{2}~~ Any certificate issued by the board shall
 2 include the following:

3 ~~{a}~~ an environmental evaluation statement related to
 4 the facility being certified. The statement shall include
 5 but not be limited to analysis of the following information:

6 ~~{i}~~ the environmental impact of the proposed facility;

7 ~~{ii}~~ any adverse environmental effects which cannot be
 8 avoided by issuance of the certificate;

9 ~~{iii}~~ problems and objections raised by other federal
 10 and state agencies and interested groups; and

11 ~~{iv}~~ alternatives to the proposed facility;

12 ~~{b}~~ a plan for monitoring environmental effects of the
 13 proposed facility;

14 ~~{c}~~ a plan for monitoring the certified facility site
 15 between the time of certification and completion of
 16 construction;

17 ~~{d}~~ a time limit as provided in subsection ~~{4}~~ ~~{3}~~;

18 and

19 ~~{e}~~ a statement signed by the applicant showing
 20 agreement to comply with the requirements of this chapter
 21 and the conditions of the certificate:

22 ~~{4}{3}~~ ~~{a}~~ The board shall issue as part of the
 23 certificate the following time limits:

24 ~~{i}~~ For a facility as defined in ~~{b}~~ or ~~{c}~~ of
 25 75-20-104~~{10}~~~~{11}~~~~{b}~~ or ~~{11}~~~~{c}~~ that is more than 30 miles

1 in length, construction must be completed within 10 years;

2 ~~{ii}~~ For a facility as defined in ~~{b}~~ of
 3 75-20-104~~{10}~~~~{11}~~~~{b}~~ that is 30 miles or less in length,
 4 construction must be completed within 5 years;

5 ~~{iii}~~ For a facility as defined in ~~{a}~~ of 75-20-104~~{10}~~
 6 ~~{11}~~~~{a}~~, construction must begin within 6 years and continue
 7 with due diligence in accordance with preliminary
 8 construction plans established in the certificate.

9 ~~{b}~~ Unless extended or renewed in accordance with
 10 subsection ~~{4}~~~~{c}~~ ~~{3}{c}~~ or 75-20-225 through 75-20-227, a
 11 certificate lapses and is void if the facility is not
 12 constructed or if construction of the facility is not
 13 commenced within the time limits provided in this section.

14 ~~{c}~~ The time limit may be extended for a reasonable
 15 period upon a showing by the applicant to the board that a
 16 good faith effort is being undertaken to complete
 17 construction under subsections ~~{4}~~~~{a}~~~~{i}~~ subsection
 18 ~~{3}{a}~~~~{i}~~ and ~~{4}{a}~~~~{ii}~~ or ~~{3}{a}~~~~{iii}~~ or to begin
 19 construction under subsection ~~{4}~~~~{a}~~~~{iii}~~ ~~{3}{a}~~~~{iii}~~. Under
 20 this subsection, a good faith effort includes the process of
 21 acquiring any necessary state or federal permit or
 22 certificate for the facility and the process of judicial
 23 review of any such permit or certificate.

24 ~~{5}{4}~~ The provisions of subsection ~~{4}~~ ~~{3}~~ apply to
 25 any facility for which a certificate has not been issued or

1 ~~for which construction is yet to be commenced."~~

2 Section 6. Section 75-20-304, MCA, is amended to 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 subject to this chapter that a facility or
15 associated facility has been damaged or destroyed as a
16 result of fire, flood, or other natural disaster or as the
17 result of insurrection, war, or other civil disorder and
18 there exists an immediate need for construction of a new
19 facility or associated facility or the relocation of a
20 previously existing facility or associated facility in order
21 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 AND 75-20-501(5) and the requirements of~~
25 ~~subsections--(1)(a)(iv)--and--(v)--of~~ THE REQUIREMENTS OF

1 SUBSECTIONS (1)(A)(IV) AND (V) OF 75-20-211~~(1)(a)(iv),~~
2 75-20-216(3), AND 75-20-303(3)(A)(IV)~~75-20-216(3),--and~~

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

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

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

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

17 (d) the proposed facility will have a beneficial
18 effect on the economy of the county in which the facility is
19 proposed to be located.

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

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

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

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

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

22 ~~Section 19, Section 75-20-402, MCA, is amended to~~
 23 ~~read:~~

24 ~~"75-20-402, Monitoring. The board, the department,~~
 25 ~~the department of health, and the board of health shall~~

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

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

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

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 21, 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-22,--Section--75-20-501,--MCA,--is--amended--to
13 read:

14 *75-20-501,--Annual--long-range--plan--submitted----
15 contents----available-to-public.--(1)--Each-utility-and-each
16 person-contemplating-the-construction-of-a--facility--within
17 this-state-in-the-ensuing-10-years-shall-furnish-annually-to
18 the--department--for--its--review--a-long-range-plan-for-the
19 construction-and-operation-of-facilities;

20 (2)--The-plan-shall-be-submitted-by-July-1-of-each-year
21 and-must-include-the-following:

22 (a)--the--general--location,--size,--and--type--of--all
23 facilities-to-be-owned-and-operated-by-the-utility-or-person
24 whos' when construction-is-projected-to-commence--during-the
25 ensuing-10-years,--as-well-as-those-facilities-to-be--removed

1 from-service-during-the-planning-period;

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

7 (c)--a--description--of--the--efforts--to--involve
8 environmental-protection-and-land-use-planning--agencies--in
9 the--planning--process,--as-well-as-other-efforts-to-identify
10 and-minimize-environmental-problems-at-the-earliest-possible
11 stage-in-the-planning-process;

12 (d)--projections-of-the-demand-for-the-service-rendered
13 by-the a-utility-or-person-and-explanation-of-the-basis--for
14 those-projections-and-a-description-of-the-manner-and-extent
15 to--which--the--proposed--facilities-will-meet-the-projected
16 demand;--and

17 (e)--additional-information-that-the-board-by--rule--or
18 the--department--on-its-own-initiative-or-upon-the-advice-of
19 interested-state-agencies-might-request requests in-order-to
20 carry-out-the-purposes-of-this-chapter;

21 (3)--The-plan-shall-be-furnished-to-the-governing--body
22 of--each--county--in-which-any-facility-included-in-the-plan
23 under-(2)(a)-of-this-section-is-proposed-to-be--located--and
24 made--available-to-the-public-by-the-department;--The-utility
25 or-person-shall-give-public-notice-throughout-the--state--of

1 its plan by filing the plan with the environmental quality
2 council, the department of health and environmental
3 sciences, the department of highways, the department of
4 public service regulation, the department of state lands,
5 the department of fish, wildlife, and parks, and the
6 department of commerce. Citizen environmental protection and
7 resource planning groups and other interested Interested
8 persons may obtain a plan by written request and payment
9 therefor to the department.

10 (4) A rural electric cooperative may furnish the
11 department with a copy of the long range plan and 2 year
12 work plan required to be completed under federal rural
13 electrification requirements in lieu of the long range plan
14 required in subsection (1).

15 (5) No person may file an application for a facility
16 unless the facility had been was adequately identified in a
17 long range plan at least 2 years prior to acceptance of an
18 application by the department, except for electric
19 transmission lines of a design capacity of 230 kilovolts or
20 less."

21 Section 23, Section 75-20-502, MCA, is amended to
22 read:

23 "75-20-502. Study of included facilities. If a
24 utility or person lists and identifies a proposed facility
25 in its the plan, submitted pursuant to 75-20-501, as one on

1 which construction is proposed to be commenced within the
2 5-year period following submission of the plan, the
3 department shall commence examination and evaluation of the
4 proposed site to determine whether construction of the
5 proposed facility would unduly impair the environmental
6 values in 75-20-503. This study may be continued until such
7 time as a person files an application for a certificate
8 under 75-20-211. Information gathered under this section may
9 be used to support findings and recommendations required for
10 issuance of a certificate."

11 Section 24, Section 75-20-503, MCA, is amended to
12 read:

13 "75-20-503. Environmental factors evaluated. In
14 evaluating long range plans, conducting 5-year site reviews,
15 and evaluating applications for certificates, the board and
16 department shall give consideration to the following list of
17 environmental factors, where applicable, and may by rule add
18 to the categories of this section:

19 (1) energy needs; requirements

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

21 (b) availability and desirability of alternative
22 sources of energy;

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

25 (d) promotional activities of the utility which may

1 have-given-rise-to-the-need-for-this-facility;

2 {e}--socially-beneficial-uses-of--the--output--of--this

3 facility,---including---its---uses--to--protect--or--enhance

4 environmental-quality;

5 {f}--conservation-activities--which--could--reduce--the

6 need-for-more-energy;

7 {g}--research---activities---of---the--utility--of--new

8 technology---available---to---it---which---might---minimize

9 environmental-impact;

10 {z}--land-use-impacts;

11 {a}--area-of-land-required-and-ultimate-use;

12 {b}--consistency--with-areawide-state-and-regional-land

13 use-plans;

14 {c}--consistency-with-existing-and-projected--nearby

15 land-use;

16 {d}--alternative-uses-of-the-site;

17 {e}--impact---on---population---already--in--the--area,

18 population-attracted-by-construction-or-operation-of--the

19 facility-itself;

20 {f}--impact---of---availability--of--energy--from--this

21 facility-on-growth-patterns-and-population-dispersal;

22 {g}--geologic-suitability-of-the-site-or-route;

23 {h}--seismologic-characteristics;

24 {i}--construction-practices;

25 {j}--extent-of-erosion,-scouring,-wasting-of-land,-both

1 at-site-and-as-a--result--of--fossil-fuel--demands--of--the

2 facility;

3 {k}--corridor--design--and-construction-precautions-for

4 transmission-lines-or-aqueducts;

5 {l}--scenic-impacts;

6 {m}--effects-on-natural-systems,-wildlife,-plant--life;

7 {n}--impacts---on---important--historic--architectural,

8 archeological,-and-cultural-areas-and-features;

9 {o}--extent-of--recreation--opportunities--and--related

10 compatible-uses;

11 {p}--public-recreation-plan-for-the-project;

12 {q}--public-facilities-and-accommodation;

13 {r}--opportunities--for-joint-use-with-energy-intensive

14 industries-or-other-activities-to-utilize--the--waste--heat

15 from-facilities;

16 {s}--for--facilities--defined--in--75-20-104{11}{b)-and

17 {11}{c)}, opportunities-for-using-public-lands--for--location

18 of--facilities--whenever--as-economically-practicable-as-the

19 use-of-private-lands-and-compatible-with-the-requirements-of

20 this-section;

21 {3}--water-resources-impacts;

22 {a}--hydrologic-studies-of-adequacy-of-water-supply-and

23 impact-of-facility-on-streamflow,-lakes,-and-reservoirs;

24 {b}--hydrologic-studies--of--impact--of--facilities--on

25 groundwater;

1 (c)--cooling-system-evaluation, including consideration
 2 of alternatives;
 3 (d)--inventory---of---effluents,---including---physical,
 4 chemical, biological, and radiological characteristics;
 5 (e)--hydrologic studies--of--effects--of--effluents--on
 6 receiving---waters,---including---mixing---characteristics--of
 7 receiving-waters, changed--evaporation--due--to--temperature
 8 differentials,--and-effect-of-discharge-on-bottom-sediments;
 9 (f)--relationship-to-water-quality-standards;
 10 (g)--effects-of-changes--in--quantity--and--quality--on
 11 water--use--by-others, including both withdrawal and in-situ
 12 uses;
 13 (h)--relationship-to-projected-uses;
 14 (i)--relationship-to-water-rights;
 15 (j)--effects-on-plant-and-animal-life, including algae,
 16 macroinvertebrates, and fish population;
 17 (k)--effects--on--unique---or---otherwise---significant
 18 ecosystems, e.g., wetlands;
 19 (l)--monitoring programs;
 20 (4)--air-quality impacts:
 21 (a)--meteorology--wind--direction-and-velocity, ambient
 22 temperature---ranges,---precipitation---values,---inversion
 23 occurrence, other effects on dispersion;
 24 (b)--topography--factors-affecting-dispersion;
 25 (c)--standards--in--effect-and-projected-for-emissions;

1 (d)--design-capability-to-meet-standards;
 2 (e)--emissions-and-controls:
 3 (i)--stack-design;
 4 (ii)--particulates;
 5 (iii)--sulfur-oxides;
 6 (iv)--oxides-of-nitrogen, and
 7 (v)--heavy---metals,---trace---elements,---radioactive
 8 materials, and other toxic substances;
 9 (f)--relationship--to-present-and-projected-air-quality
 10 of-the-area;
 11 (g)--monitoring-program;
 12 (5)--solid-wastes-impacts:
 13 (a)--solid-waste-inventory;
 14 (b)--disposal-program;
 15 (c)--relationship---of---disposal---practices---to
 16 environmental-quality-criteria;
 17 (d)--capacity--of--disposal--sites--to-accept-projected
 18 waste-loadings;
 19 (6)--radiation-impacts:
 20 (a)--land-use-controls-over-development-and-population;
 21 (b)--wastes-and-associated-disposal-program-for--solid,
 22 liquid, radioactive, and gaseous wastes;
 23 (c)--analyses---and---studies---of---the---adequacy--of
 24 engineering-safeguards-and-operating-procedures;
 25 (d)--monitoring--adequacy--of--devices---and---sampling

1 techniques;

2 {7}--noise-impacts;

3 {a}--construction-period-levels;

4 {b}--operational-levels;

5 {c}--relationship-of-present-and-projected-noise-levels

6 to-existing-and-potential-stricter-noise-standards;

7 {d}--monitoring--adequacy-of-devices-and-methods;"

8 Section-25,--Section--75-20-1202,--MCA,--is--amended-to

9 read:

10 "75-20-1202,--Definitions,--As-used-in--this--part--and

11 75-20-201---through--75-20-203,--the--following--definitions

12 apply:

13 {i}--{a}--"Nuclear-facility"--means-each-plant,--unit,--or

14 other-facility-designed-for-or-capable-of:

15 {i}--generating--50-megawatts-of-electricity-or-more-by

16 means-of-nuclear-fission;

17 {ii}--converting,-----enriching,-----fabricating,-----or

18 reprocessing-uranium-minerals-or-nuclear-fuels;--or

19 {iii}--storing--or--disposing--of--radioactive-wastes-or

20 materials-from-a-nuclear-facility;

21 {b}--"Nuclear---facility"---does---not---include---any

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

23 or--medical--purposes--not--connected--with--the--commercial

24 generation-of-energy;

25 {2}--"Facility",--as--defined--in--75-20-104(10){11},--is

1 further-defined-to-include-any-nuclear-facility--as--defined

2 in-subsection-{i}{a}-of-this-section."

3 Section 7. Section 75-20-1205, MCA, is amended to

4 read:

5 "75-20-1205. Emergency approval authority invalid for

6 nuclear facilities. Notwithstanding the provisions of

7 subsections-{2}-and-{3}-of 75-20-304(2) AND (3), the board

8 may not waive compliance with any of the provisions of this

9 part or 75-20-201 through 75-20-203 relating to

10 certification of a nuclear facility."

11 NEW SECTION. Section 8. Extension of authority. Any

12 existing authority of the board of natural resources and

13 conservation, the board of health and environmental

14 sciences, and the department of health and environmental

15 sciences to make rules on the subject of the provisions of

16 this act is extended to the provisions of this act.

17 NEW-SECTION.--Section-9,--Effective-date,--This-act--is

18 effective-on-passage-and-approval.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 11

1987

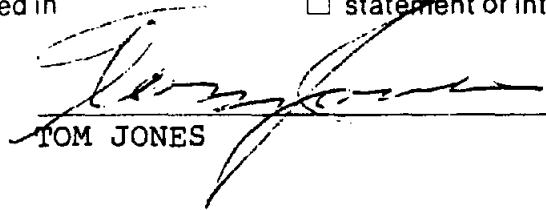
Mr. Speaker: We, the committee on NATURAL RESOURCES

report SB 292

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached



TOM JONES Chairman

1. Title, line 19.
Strike: ";" through "DATE"
2. Page 46, lines 17 and 18.
Strike: section 9 in its entirety

ms

THIRD

reading copy (BLUE)
color

REP. GILBERT WILL CARRY

COMMITTEE OF THE WHOLE AMENDMENT

38

HOUSE

3-17-87
DATE
12:00
TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 292

3rd reading copy (blue) as follows:
Color

PASSED

STATEMENT OF INTENT
SB292

A statement of intent is required for this bill in order to provide guidance to the Board of Natural Resources and Conservation concerning the Board's authority to make rules on the provisions of the Montana Major Facility Siting Act that are affected by this bill.

Section 5 amends the Board's decision standard concerning adverse environmental impact. The term "minimizes" is substituted for the existing qualifying phrase "represents the minimum". This amendment is consistent with the historical practice and interpretation of the Board in carrying out its functions under the siting act. It is the intent of the legislature that the Board's rules and regulations in effect at the time of the enactment of this bill represent reasonable rules implementing and interpreting the decision standard as amended by this bill.

SW

ADOPT
REJECT

Rep. Bob Gilbert
Rep. Gilbert