

SENATE BILL 223

Introduced by Keating, et al.

1/25	Introduced
1/25	Referred to Natural Resources
2/03	Hearing
2/13	Committee Report--Bill Passed as Amended
2/15	2nd Reading Passed
2/17	3rd Reading Passed

Transmitted to House

2/21	Referred to Natural Resources
3/03	Hearing
3/15	Tabled in Committee

1 *Senate* BILL NO. *223*
 2 INTRODUCED BY *Senator Jimenez 7th House*
 3 *Asst. Dir. Robert Holt*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MAJOR
 5 FACILITY SITING ACT BY REDEFINING THE TERM "UTILITY";
 6 CLARIFYING THAT A NONUTILITY IS NOT REQUIRED TO DEMONSTRATE
 7 THE NEED FOR A PROPOSED FACILITY IN AN APPLICATION OR
 8 LONG-RANGE PLAN; PROVIDING THAT THE BOARD OF NATURAL
 9 RESOURCES AND CONSERVATION MAY NOT CONSIDER ALTERNATIVE
 10 PRODUCTS FROM A FACILITY PROPOSED BY A NONUTILITY; AND
 11 AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-201,
 12 75-20-211, 75-20-301, 75-20-303, 75-20-501, AND 85-15-107,
 13 MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

25 (2) The legislature finds that the construction of

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

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

15 **"75-20-104. Definitions.** In this chapter, unless the
 16 context requires otherwise, the following definitions apply:

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

20 (2) "Application" means an application for a
 21 certificate submitted in accordance with this chapter and
 22 the rules adopted hereunder.

23 (3) "Associated facilities" includes but is not
 24 limited to transportation links of any kind, aqueducts,
 25 diversion dams, pipelines, transmission substations, storage

1 ponds, reservoirs, and any other device or equipment
2 associated with the production or delivery of the energy
3 form or product produced by a facility, except that the term
4 does not include a facility or a natural gas or crude oil
5 gathering line 17 inches or less in inside diameter.

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

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

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

15 (7) "Commence to construct" means:

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

22 (b) the fracturing of underground formations by any
23 means if such activity is related to the possible future
24 development of a gasification facility or a facility
25 employing geothermal resources but does not include the

1 gathering of geological data by boring of test holes or
2 other underground exploration, investigation, or
3 experimentation;

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

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

12 (8) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

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

18 (10) "Facility" means:

19 (a) except for crude oil and natural gas refineries
20 and those facilities subject to The Montana Strip and
21 Underground Mine Reclamation Act, each plant, unit, or other
22 facility and associated facilities designed for or capable
23 of:

24 (i) generating 50 megawatts of electricity or more or
25 any addition thereto (except pollution control facilities

1 approved by the department of health and environmental
2 sciences added to an existing plant) having an estimated
3 cost in excess of \$10 million;

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

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

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

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

15 (b) each electric transmission line and associated
16 facilities of a design capacity of more than 69 kilovolts,
17 except that the term:

18 (i) does not include an electric transmission line and
19 associated facilities of a design capacity of 230 kilovolts
20 or less and 10 miles or less in length; and

21 (ii) does not include an electric transmission line
22 with a design capacity of more than 69 kilovolts and up to
23 and including 115 kilovolts for which the person planning to
24 construct the line has obtained right-of-way agreements or
25 options for a right-of-way from more than 75% of the owners

1 who collectively own more than 75% of the property along the
2 centerline;

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

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

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

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

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

22 (13) "Utility" means any person engaged-in--any--aspect
23 of-the-production, storage, sale, delivery, or furnishing of
24 heat, electricity, gas, hydrocarbon products, or energy in
25 any form for ultimate public use furnishing energy within

1 Montana from the proposed facility and subject to rate of
 2 return or rate regulation by the state of Montana or a
 3 federal regulatory body."

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

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

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

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

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

24 (5) This chapter applies, to the fullest extent
 25 allowed by federal law, to all federal facilities and to all

1 facilities over which an agency of the federal government
 2 has jurisdiction."

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

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

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

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

16 (iii) a statement explaining the need for the facility
 17 if proposed by a utility;

18 (iv) for facilities defined in 75-20-104(10)(b) and
 19 (10)(c), a description of reasonable alternate locations for
 20 the facility, a general description of the comparative
 21 merits and detriments of each location submitted, and a
 22 statement of the reasons why the proposed location is best
 23 suited for the facility;

24 (v) (A) for facilities as defined in 75-20-104(10)(b)
 25 and (10)(c), baseline data for the primary and reasonable

1 alternate locations; or

2 (B) for facilities as defined in 75-20-104(10)(a),
3 (10)(d), and (10)(e), baseline data for the proposed
4 location and, at the applicant's option, any alternative
5 locations acceptable to the applicant for siting the
6 facility;

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

9 (vii) such other information as the applicant considers
10 relevant or as the board and board of health by order or
11 rule or the department and department of health by order or
12 rule may require.

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

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

21 (3) An application shall be accompanied by proof of
22 service of a copy of the application on the chief executive
23 officer of each unit of local government, county
24 commissioner, city or county planning boards, and federal
25 agencies charged with the duty of protecting the environment

1 or of planning land use in the area in which any portion of
2 the proposed facility is proposed or is alternatively
3 proposed to be located and on the following state government
4 agencies:

- 5 (a) environmental quality council;
- 6 (b) department of public service regulation;
- 7 (c) department of fish, wildlife, and parks;
- 8 (d) department of state lands;
- 9 (e) department of commerce;
- 10 (f) department of highways;
- 11 (g) department of revenue.

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

15 (5) An application shall also be accompanied by proof
16 that public notice thereof was given to persons residing in
17 the area in which any portion of the proposed facility is
18 proposed or is alternatively proposed to be located, by
19 publication of a summary of the application in those
20 newspapers that will substantially inform those persons of
21 the application."

22 **Section 5.** Section 75-20-301, MCA, is amended to read:
23 "75-20-301. Decision of board -- findings necessary
24 for certification. (1) Within 60 days after submission of
25 the recommended decision by the hearing examiner, the board

1 shall make complete findings, issue an opinion, and render a
2 decision upon the record, either granting or denying the
3 application as filed or granting it upon such terms,
4 conditions, or modifications of the construction, operation,
5 or maintenance of the facility as the board considers
6 appropriate.

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

10 (a) the basis of the need for the facility if proposed
11 by a utility;

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

13 (c) that the facility minimizes adverse environmental
14 impact, considering the state of available technology and
15 the nature and economics of the various alternatives, except
16 that for a facility proposed by a nonutility, the board may
17 not consider alternative products from the facility, other
18 than those proposed by the applicant;

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) that the use of public lands for location of the
20 facility was evaluated and public lands were selected
21 whenever their use is as economically practicable as the use
22 of private lands and compatible with the environmental
23 criteria listed in 75-20-503.

24 (3) In determining that the facility will serve the
25 public interest, ~~convenience, and necessity~~ under subsection

(2)(g) of this section, the board shall consider:

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

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

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

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

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

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

Section 6. Section 75-20-303, MCA, is amended to read:

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

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

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

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

(a) an environmental evaluation statement related to

the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

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

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

(iv) alternatives to the proposed facility, consistent with the requirements of 75-20-301(2)(c);

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

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

(d) a time limit as provided in subsection (4); and

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

(4) (a) The board shall issue as part of the certificate the following time limits:

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

(ii) For a facility as defined in (b) of 75-20-104(10) that is 30 miles or less in length, construction must be

completed within 5 years.

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

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

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

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

Section 7. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted -- contents -- available to public. (1) Each utility and each

person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

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

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

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

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

(d) in the case of utility facilities, projections of the demand for the service rendered by the utility ~~or person~~ and explanation of the basis for those projections and a description of the manner and extent to which the proposed

facilities will meet the projected demand; and

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

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

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

(5) No person may file an application for a facility

unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department, except for electric transmission lines of a design capacity of 230 kilovolts or less."

Section 8. Section 85-15-107, MCA, is amended to read:

***85-15-107. Exemptions.** The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit. The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to federal dams and reservoirs, or to dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission. The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams that are required to obtain a certificate of ~~environmental compatibility and public need~~ pursuant to 75-20-201 for the period during which the dam is subject to the certificate. In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to

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1 high-hazard dams that have been inspected by the U.S. army
2 corps of engineers pursuant to P.L. 92-367 and for which
3 resultant dam safety reports have been submitted to the
4 owner."

5 NEW SECTION. **Section 9. Extension of authority.** Any
6 existing authority to make rules on the subject of the
7 provisions of [this act] is extended to the provisions of
8 [this act].

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 223

INTRODUCED BY KEATING, GIACOMETTO, HANSON, KASTEN,
ZOOK, PAVLOVICH, GALT

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FACILITY SITING ACT BY REDEFINING THE TERM "UTILITY";
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unreasonable depletion and degradation of natural resources,
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(2) The legislature finds that the construction of
additional power or energy conversion facilities may be
necessary to meet the increasing need for electricity,
energy, and other products and that these facilities have an
effect on the environment, an impact on population
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of this state. Therefore, it is necessary to ensure that the
location, construction, and operation of power and energy
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machinery and equipment which would significantly change the
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certificate submitted in accordance with this chapter and
the rules adopted hereunder.

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1 diversion dams, pipelines, transmission substations, storage
2 ponds, reservoirs, and any other device or equipment
3 associated with the production or delivery of the energy
4 form or product produced by a facility, except that the term
5 does not include a facility or a natural gas or crude oil
6 gathering line 17 inches or less in inside diameter.

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

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10 environmental sciences provided for in 2-15-2104.

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12 environmental compatibility or, in the case of a utility,
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15 for the construction or operation of a facility.

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

23 (b) the fracturing of underground formations by any
24 means if such activity is related to the possible future
25 development of a gasification facility or a facility

1 employing geothermal resources but does not include the
2 gathering of geological data by boring of test holes or
3 other underground exploration, investigation, or
4 experimentation;

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

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

13 (8) "Department" means the department of natural
14 resources and conservation provided for in Title 2, chapter
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17 health and environmental sciences provided for in Title 2,
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1 any addition thereto (except pollution control facilities
2 approved by the department of health and environmental
3 sciences added to an existing plant) having an estimated
4 cost in excess of \$10 million;

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

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

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

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

16 (b) each electric transmission line and associated
17 facilities of a design capacity of more than 69 kilovolts,
18 except that the term:

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20 associated facilities of a design capacity of 230 kilovolts
21 or less and 10 miles or less in length; and

22 (ii) does not include an electric transmission line
23 with a design capacity of more than 69 kilovolts and up to
24 and including 115 kilovolts for which the person planning to
25 construct the line has obtained right-of-way agreements or

1 options for a right-of-way from more than 75% of the owners
2 who collectively own more than 75% of the property along the
3 centerline;

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 (11) "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 (12) "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 (13) "Utility" means any person engaged-in--any--aspect
24 of-the-production, storage, sale, delivery, or furnishing of
25 heat, electricity, gas, hydrocarbon products, or energy in

~~any form for ultimate public use furnishing energy within Montana from the proposed facility and subject to rate of return or rate regulation by the state of Montana or a federal regulatory body.~~ ENGAGED IN ANY ASPECT OF THE PRODUCTION, STORAGE, SALE, DELIVERY, OR FURNISHING OF HEAT, ELECTRICITY, OR NATURAL GAS FOR ULTIMATE PUBLIC USE THAT:

(A) HAS A LEGALLY PROTECTED SERVICE AREA OR A BODY OF CUSTOMERS FOR WHOM THE PERSON HAS A CONVENTIONAL UTILITY MANDATE TO SERVE LOADS; OR

(B) IS A WHOLESALE ENERGY SUPPLIER OR TRANSPORTER WITH REQUIREMENTS CONTRACTS, PARTICIPATION AGREEMENTS, OR OTHER CONTRACTUAL AGREEMENTS TO SERVE PERSONS SPECIFIED IN SUBSECTION (13)(A) FOR THE ENERGY FORM TO BE PRODUCED OR TRANSPORTED BY A PROPOSED FACILITY."

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

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

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any

terms, conditions, and modifications contained therein.

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

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

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

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

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

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

(ii) a summary of any studies which have been made of

1 the environmental impact of the facility;

2 (iii) a statement explaining the need for the facility

3 if proposed by a utility;

4 (iv) for facilities defined in 75-20-104(10)(b) and

5 (10)(c), a description of reasonable alternate locations for

6 the facility, a general description of the comparative

7 merits and detriments of each location submitted, and a

8 statement of the reasons why the proposed location is best

9 suited for the facility;

10 (v) (A) for facilities as defined in 75-20-104(10)(b)

11 and (10)(c), baseline data for the primary and reasonable

12 alternate locations; or

13 (B) for facilities as defined in 75-20-104(10)(a),

14 (10)(d), and (10)(e), baseline data for the proposed

15 location and, at the applicant's option, any alternative

16 locations acceptable to the applicant for siting the

17 facility;

18 (vi) at the applicant's option, an environmental study

19 plan to satisfy the requirements of this chapter; and

20 (vii) such other information as the applicant considers

21 relevant or as the board and board of health by order or

22 rule or the department and department of health by order or

23 rule may require.

24 (b) A copy or copies of the studies referred to in

25 subsection (1)(a)(ii) above shall be filed with the

1 department, if ordered, and shall be available for public

2 inspection.

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

4 two or more facilities in combination which are physically

5 and directly attached to each other and are operationally a

6 single operating entity.

7 (3) An application shall be accompanied by proof of

8 service of a copy of the application on the chief executive

9 officer of each unit of local government, county

10 commissioner, city or county planning boards, and federal

11 agencies charged with the duty of protecting the environment

12 or of planning land use in the area in which any portion of

13 the proposed facility is proposed or is alternatively

14 proposed to be located and on the following state government

15 agencies:

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

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

24 by a notice specifying the date on or about which the

25 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 in which any portion of the proposed facility 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 5. Section 75-20-301, MCA, is amended to read:

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

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

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

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and

the nature and economics of the various alternatives, except that for a facility proposed by a nonutility, the board may not consider alternative products from the facility, other than those proposed by the applicant;

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

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

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

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

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

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

(g) that the facility will serve the public interest;

1 ~~convenience-and-necessity;~~

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

5 (i) that the use of public lands for location of the
6 facility was evaluated and public lands were selected
7 whenever their use is as economically practicable as the use
8 of private lands and compatible with the environmental
9 criteria listed in 75-20-503.

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

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

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

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

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

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

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

25 **Section 6.** Section 75-20-303, MCA, is amended to read:

1 **"75-20-303. Opinion issued with decision -- contents.**

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

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

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

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

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

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

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

19 (iv) alternatives to the proposed facility, consistent
20 with the requirements of 75-20-301(2)(c);

21 (b) a plan for monitoring environmental effects of the
22 proposed facility;

23 (c) a plan for monitoring the certified facility site
24 between the time of certification and completion of
25 construction;

(d) a time limit as provided in subsection (4); and

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

(4) (a) The board shall issue as part of the certificate the following time limits:

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

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

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

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

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or

to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

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

Section 7. Section 75-20-501, MCA, is amended to read:

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

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

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

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a

1 coordinated regional plan for meeting the energy needs of
2 the region;

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

8 (d) in the case of utility facilities, projections of
9 the demand for the service rendered by the utility ~~or person~~
10 and explanation of the basis for those projections and a
11 description of the manner and extent to which the proposed
12 facilities will meet the projected demand; and

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

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

1 the department of fish, wildlife, and parks, and the
2 department of commerce. Citizen environmental protection and
3 resource planning groups and other interested persons may
4 obtain a plan by written request and payment therefor to the
5 department.

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

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

17 **Section 8.** Section 85-15-107, MCA, is amended to read:

18 **"85-15-107. Exemptions.** The provisions of 85-15-105,
19 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through
20 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do
21 not apply to dams subject to a permit issued pursuant to
22 82-4-335 for the period during which the dam is subject to
23 the permit. The provisions of 85-15-108 through 85-15-110,
24 85-15-209 through 85-15-216, 85-15-305, 85-15-401,
25 85-15-501, and 85-15-502 do not apply to federal dams and

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1 reservoirs, or to dams and reservoirs licensed and subject
2 to inspection by the federal energy regulatory commission.
3 The provisions of 85-15-105, 85-15-106, 85-15-108 through
4 85-15-110, 85-15-209 through 85-15-216, 85-15-305,
5 85-15-401, 85-15-501, and 85-15-502 do not apply to dams
6 that are required to obtain a certificate ~~of--environmental~~
7 ~~compatibility--and-public-need~~ pursuant to 75-20-201 for the
8 period during which the dam is subject to the certificate.
9 In addition, the provisions of 85-15-108 through 85-15-110,
10 85-15-209 through 85-15-216, 85-15-305, 85-15-401,
11 85-15-501, and 85-15-502 do not apply until July 1, 1990, to
12 high-hazard dams that have been inspected by the U.S. army
13 corps of engineers pursuant to P.L. 92-367 and for which
14 resultant dam safety reports have been submitted to the
15 owner."

16 NEW SECTION. **Section 9.** Extension of authority. Any
17 existing authority to make rules on the subject of the
18 provisions of [this act] is extended to the provisions of
19 [this act].

-End-

1 SENATE BILL NO. 223

2 INTRODUCED BY KEATING, GIACOMETTO, HANSON, KASTEN,

3 ZOOK, PAVLOVICH, GALT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MAJOR
6 FACILITY SITING ACT BY REDEFINING THE TERM "UTILITY";
7 CLARIFYING THAT A NONUTILITY IS NOT REQUIRED TO DEMONSTRATE
8 THE NEED FOR A PROPOSED FACILITY IN AN APPLICATION OR
9 LONG-RANGE PLAN; PROVIDING THAT THE BOARD OF NATURAL
10 RESOURCES AND CONSERVATION MAY NOT CONSIDER ALTERNATIVE
11 PRODUCTS FROM A FACILITY PROPOSED BY A NONUTILITY; AND
12 AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-201,
13 75-20-211, 75-20-301, 75-20-303, 75-20-501, AND 85-15-107,
14 MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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

16 "75-20-104. Definitions. In this chapter, unless the
17 context requires otherwise, the following definitions apply:

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

21 (2) "Application" means an application for a
22 certificate submitted in accordance with this chapter and
23 the rules adopted hereunder.

24 (3) "Associated facilities" includes but is not
25 limited to transportation links of any kind, aqueducts,

1 diversion dams, pipelines, transmission substations, storage
2 ponds, reservoirs, and any other device or equipment
3 associated with the production or delivery of the energy
4 form or product produced by a facility, except that the term
5 does not include a facility or a natural gas or crude oil
6 gathering line 17 inches or less in inside diameter.

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

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

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

16 (7) "Commence to construct" means:

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

23 (b) the fracturing of underground formations by any
24 means if such activity is related to the possible future
25 development of a gasification facility or a facility

1 employing geothermal resources but does not include the
2 gathering of geological data by boring of test holes or
3 other underground exploration, investigation, or
4 experimentation;

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

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

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

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

19 (10) "Facility" means:

20 (a) except for crude oil and natural gas refineries
21 and those facilities subject to The Montana Strip and
22 Underground Mine Reclamation Act, each plant, unit, or other
23 facility and associated facilities designed for or capable
24 of:

25 (i) generating 50 megawatts of electricity or more or

1 any addition thereto (except pollution control facilities
2 approved by the department of health and environmental
3 sciences added to an existing plant) having an estimated
4 cost in excess of \$10 million;

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

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

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

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

16 (b) each electric transmission line and associated
17 facilities of a design capacity of more than 69 kilovolts,
18 except that the term:

19 (i) does not include an electric transmission line and
20 associated facilities of a design capacity of 230 kilovolts
21 or less and 10 miles or less in length; and

22 (ii) does not include an electric transmission line
23 with a design capacity of more than 69 kilovolts and up to
24 and including 115 kilovolts for which the person planning to
25 construct the line has obtained right-of-way agreements or

1 options for a right-of-way from more than 75% of the owners
2 who collectively own more than 75% of the property along the
3 centerline;

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 (11) "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 (12) "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 (13) "Utility" means any person engaged-in--any--aspect
24 of-the-production,-storage,-sale,-delivery,-or-furnishing-of
25 heat,-electricity,-gas,-hydrocarbon-products,-or-energy-in

1 ~~any-form-for-ultimate-public-use~~ furnishing--energy--within
 2 ~~Montana--from--the--proposed-facility-and-subject-to-rate-of~~
 3 ~~return-or-rate-regulation-by--the--state--of--Montana--or--a~~
 4 ~~federal--regulatory--body-~~ ENGAGED IN ANY ASPECT OF THE
 5 PRODUCTION, STORAGE, SALE, DELIVERY, OR FURNISHING OF HEAT,
 6 ELECTRICITY, OR NATURAL GAS FOR ULTIMATE PUBLIC USE THAT:

7 (A) HAS A LEGALLY PROTECTED SERVICE AREA OR A BODY OF
 8 CUSTOMERS FOR WHOM THE PERSON HAS A CONVENTIONAL UTILITY
 9 MANDATE TO SERVE LOADS; OR

10 (B) IS A WHOLESALE ENERGY SUPPLIER OR TRANSPORTER WITH
 11 REQUIREMENTS CONTRACTS, PARTICIPATION AGREEMENTS, OR OTHER
 12 CONTRACTUAL AGREEMENTS TO SERVE PERSONS SPECIFIED IN
 13 SUBSECTION (13)(A) FOR THE ENERGY FORM TO BE PRODUCED OR
 14 TRANSPORTED BY A PROPOSED FACILITY."

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

16 **"75-20-201.** Certificate required -- operation in
 17 conformance -- certificate for nuclear facility --
 18 applicability to federal facilities. (1) A person may not
 19 commence to construct a facility in the state without first
 20 applying for and obtaining a certificate ~~of--environmental~~
 21 ~~compatibility--and--public--need~~ issued with respect to the
 22 facility by the board.

23 (2) A facility with respect to which a certificate is
 24 issued may not thereafter be constructed, operated, or
 25 maintained except in conformity with the certificate and any

1 terms, conditions, and modifications contained therein.

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

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

10 (5) This chapter applies, to the fullest extent
 11 allowed by federal law, to all federal facilities and to all
 12 facilities over which an agency of the federal government
 13 has jurisdiction."

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

15 **"75-20-211.** Application -- filing and contents --
 16 proof of service and notice. (1) (a) An applicant shall file
 17 with the department and department of health a joint
 18 application for a certificate under this chapter and for the
 19 permits required under the laws administered by the
 20 department of health and the board of health in such form as
 21 the board requires under applicable rules, containing the
 22 following information:

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

25 (ii) a summary of any studies which have been made of

1 the environmental impact of the facility;

2 (iii) a statement explaining the need for the facility
3 if proposed by a utility;

4 (iv) for facilities defined in 75-20-104(10)(b) and
5 (10)(c), a description of reasonable alternate locations for
6 the facility, a general description of the comparative
7 merits and detriments of each location submitted, and a
8 statement of the reasons why the proposed location is best
9 suited for the facility;

10 (v) (A) for facilities as defined in 75-20-104(10)(b)
11 and (10)(c), baseline data for the primary and reasonable
12 alternate locations; or

13 (B) for facilities as defined in 75-20-104(10)(a),
14 (10)(d), and (10)(e), baseline data for the proposed
15 location and, at the applicant's option, any alternative
16 locations acceptable to the applicant for siting the
17 facility;

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

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

24 (b) A copy or copies of the studies referred to in
25 subsection (1)(a)(ii) above shall be filed with the

1 department, if ordered, and shall be available for public
2 inspection.

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

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

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

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

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

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

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

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

21 (a) the basis of the need for the facility if proposed
22 by a utility;

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

24 (c) that the facility minimizes adverse environmental
25 impact, considering the state of available technology and

1 the nature and economics of the various alternatives, except
2 that for a facility proposed by a nonutility, the board may
3 not consider alternative products from the facility, other
4 than those proposed by the applicant;

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

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

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

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

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

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

25 (g) that the facility will serve the public interest;

1 ~~convenience,--and-necessity;~~

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

5 (i) that the use of public lands for location of the
6 facility was evaluated and public lands were selected
7 whenever their use is as economically practicable as the use
8 of private lands and compatible with the environmental
9 criteria listed in 75-20-503.

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

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

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

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

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

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

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

25 **Section 6.** Section 75-20-303, MCA, is amended to read:

1 **"75-20-303. Opinion issued with decision -- contents.**

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

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

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

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

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

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

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

19 (iv) alternatives to the proposed facility, consistent
20 with the requirements of 75-20-301(2)(c);

21 (b) a plan for monitoring environmental effects of the
22 proposed facility;

23 (c) a plan for monitoring the certified facility site
24 between the time of certification and completion of
25 construction;

1 (d) a time limit as provided in subsection (4); and
 2 (e) a statement signed by the applicant showing
 3 agreement to comply with the requirements of this chapter
 4 and the conditions of the certificate.

5 (4) (a) The board shall issue as part of the
 6 certificate the following time limits:

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

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

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

17 (b) Unless extended or renewed in accordance with
 18 subsection (4)(c) or 75-20-225 through 75-20-227, a
 19 certificate lapses and is void if the facility is not
 20 constructed or if construction of the facility is not
 21 commenced within the time limits provided in this section.

22 (c) The time limit may be extended for a reasonable
 23 period upon a showing by the applicant to the board that a
 24 good faith effort is being undertaken to complete
 25 construction under subsections (4)(a)(i) and (4)(a)(ii) or

1 to begin construction under subsection (4)(a)(iii). Under
 2 this subsection, a good faith effort includes the process of
 3 acquiring any necessary state or federal permit or
 4 certificate for the facility and the process of judicial
 5 review of any such permit or certificate.

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

9 **Section 7.** Section 75-20-501, MCA, is amended to read:

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

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

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

23 (b) in the case of utility facilities, a description
 24 of efforts by the utility or person to coordinate the plan
 25 with other utilities or persons so as to provide a

1 coordinated regional plan for meeting the energy needs of
2 the region;

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

8 (d) in the case of utility facilities, projections of
9 the demand for the service rendered by the utility or person
10 and explanation of the basis for those projections and a
11 description of the manner and extent to which the proposed
12 facilities will meet the projected demand; and

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

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

1 the department of fish, wildlife, and parks, and the
2 department of commerce. Citizen environmental protection and
3 resource planning groups and other interested persons may
4 obtain a plan by written request and payment therefor to the
5 department.

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

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

17 **Section 8.** Section 85-15-107, MCA, is amended to read:

18 "85-15-107. **Exemptions.** The provisions of 85-15-105,
19 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through
20 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do
21 not apply to dams subject to a permit issued pursuant to
22 82-4-335 for the period during which the dam is subject to
23 the permit. The provisions of 85-15-108 through 85-15-110,
24 85-15-209 through 85-15-216, 85-15-305, 85-15-401,
25 85-15-501, and 85-15-502 do not apply to federal dams and

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1 reservoirs, or to dams and reservoirs licensed and subject
2 to inspection by the federal energy regulatory commission.
3 The provisions of 85-15-105, 85-15-106, 85-15-108 through
4 85-15-110, 85-15-209 through 85-15-216, 85-15-305,
5 85-15-401, 85-15-501, and 85-15-502 do not apply to dams
6 that are required to obtain a certificate of--environmental
7 compatibility--and-public-need pursuant to 75-20-201 for the
8 period during which the dam is subject to the certificate.
9 In addition, the provisions of 85-15-108 through 85-15-110,
10 85-15-209 through 85-15-216, 85-15-305, 85-15-401,
11 85-15-501, and 85-15-502 do not apply until July 1, 1990, to
12 high-hazard dams that have been inspected by the U.S. army
13 corps of engineers pursuant to P.L. 92-367 and for which
14 resultant dam safety reports have been submitted to the
15 owner."

16 NEW SECTION. Section 9. Extension of authority. Any
17 existing authority to make rules on the subject of the
18 provisions of [this act] is extended to the provisions of
19 [this act].

-End-