

SENATE BILL NO. 366

*Haynes*

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INTRODUCED BY

*Cole*

*Rebecca Teland Dep.*

*Storal Keating*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-201, 75-20-202, 75-20-203, 75-20-205, 75-20-211, 75-20-212, 75-20-213, 75-20-215, 75-20-216, 75-20-217, 75-20-219, 75-20-220, 75-20-221, 75-20-222, 75-20-225, 75-20-226, 75-20-227, 75-20-301, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-406, 75-20-407, 75-20-408, AND 85-15-107, MCA; REPEALING SECTIONS 75-20-103, 75-20-302, 75-20-404, 75-20-409, 75-20-501, 75-20-502, AND 75-20-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

**Section 2.** 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 (1) "Addition thereto" means the installation of new machinery and equipment which would  
2 significantly change the conditions under which the facility is operated.

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

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

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

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

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

15 (7) "Commence to construct" means:

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

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

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

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

29 (8) "Department" means the department of natural resources and conservation provided for in Title  
30 2, chapter 15, part 33.

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

3 (10) "Facility" means:

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

7 (i) generating ~~50~~ 150 megawatts of electricity or more or any addition thereto, ~~(except pollution~~  
8 ~~control facilities approved by the department of health and environmental sciences and~~ added to an existing  
9 ~~plant) having an estimated cost in excess of \$10 million;~~

10 (ii) producing ~~25~~ 250 million cubic feet or more of gas derived from coal per day ~~or any addition~~  
11 ~~thereto having an estimated cost in excess of \$10 million;~~

12 (iii) producing ~~25,000~~ 100,000 barrels of liquid hydrocarbon products per day or more ~~or any~~  
13 ~~addition thereto having an estimated cost in excess of \$10 million; or~~

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

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

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

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

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

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

28 (d) any use of geothermal resources, including the use of underground space in existence or to be  
29 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally  
30 derived power equivalent to 25 million Btu per hour or more ~~or any addition thereto having an estimated~~

1 ~~cost in excess of \$750,000;~~

2 ~~(e) any underground in situ gasification of coal.~~

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

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

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

10  
11 **Section 3.** Section 75-20-201, MCA, is amended to read:

12 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**  
13 **applicability to federal facilities.** (1) A person may not commence to construct a facility in the state without  
14 first applying for and obtaining a certificate of environmental compatibility ~~and public need~~ issued with  
15 respect to the facility by the board.

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

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

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

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

26  
27 **Section 4.** Section 75-20-202, MCA, is amended to read:

28 **"75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under  
29 diligent onsite physical construction or in operation on January 1, 1973.

30 (2) The board may adopt reasonable rules establishing exemptions from this chapter for the

1 relocation, 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 environmental impact by reason of length, size, location,  
4 available space or right-of-way, or construction methods; or

5 (ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of  
6 which will result in greater efficiency, promote energy conservation, and promote greater system reliability  
7 than the existing facility.

8 (3) The board shall waive compliance with the requirements of this chapter if the applicant makes  
9 a clear and convincing showing to the board at a public hearing that:

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

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

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

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

19 ~~(3)~~ (4) A person proposing to construct an exempt facility shall pay to the department reasonable  
20 costs, if any, incurred by the department in processing the exemption.

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

24

25 **Section 5.** Section 75-20-203, MCA, is amended to read:

26 **"75-20-203. Certificate transferable.** A certificate may be transferred, ~~subject to the approval of~~  
27 ~~the board,~~ to a person who agrees to comply with the terms, conditions, and modifications contained  
28 ~~therein~~ in the certificate."

29

30 **Section 6.** Section 75-20-205, MCA, is amended to read:

1           **"75-20-205. Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and  
 2 associated facilities certified under this chapter, the board shall condition the certificate upon board  
 3 approval of a final centerline location.

4           (2) The final centerline location must be determined in a noncontested case proceeding before the  
 5 board after the submission of a centerline location report by the department. Within 60 days after the  
 6 commencement of a noncontested case proceeding, the board shall render and record a decision approving  
 7 a centerline location.

8           (3) The department shall consult with the certificate holder and the affected landowners prior to  
 9 making its report.

10          (4) The department's report must be prepared considering the criteria set forth in 75-20-301 ~~and~~  
 11 ~~75-20-503~~ and the findings of fact and conclusions of law set out in the board decision.

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

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

18  
 19           **Section 7.** Section 75-20-211, MCA, is amended to read:

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

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

25           (ii) a summary of any studies ~~which~~ that have been made of the environmental impact of the  
 26 facility;

27           (iii) ~~a statement explaining the need for the facility;~~

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

1           ~~(iv)~~ (iv) (A) for facilities as defined in 75-20-104(10)(b) and (10)(c), baseline data for the primary  
2 and reasonable alternate locations; or

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

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

8           ~~(vi)~~ (vi) such other information as the applicant considers relevant or as the board and board of  
9 health by order or rule or the department and department of health by order or rule may require.

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

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

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

- 19           ~~(a) environmental quality council;~~
- 20           ~~(b) department of public service regulation;~~
- 21           ~~(c) department of fish, wildlife, and parks;~~
- 22           ~~(d) department of state lands;~~
- 23           ~~(e) department of commerce;~~
- 24           ~~(f) department of transportation.~~

25           ~~(4)~~ (3) The copy of the application ~~shall~~ must be accompanied by a notice specifying the date on  
26 or about which the application is to be filed.

27           ~~(5)~~ (4) An application ~~shall~~ must also be accompanied by proof that public notice ~~thereof~~ of it was  
28 given to persons residing in the area in which any portion of the proposed facility is proposed or is  
29 alternatively proposed to be located, by publication of a summary of the application in those newspapers  
30 that will substantially inform those persons of the application."

1           **Section 8.** Section 75-20-212, MCA, is amended to read:

2           **"75-20-212. Cure for failure of service.** Inadvertent failure of service on or notice to any of the  
3 municipalities, government agencies, or persons identified in ~~75-20-211(3) and (5)~~ 75-20-211 may be cured  
4 pursuant to orders of the department designed to afford them adequate notice to enable their effective  
5 participation in the proceeding."  
6

7           **Section 9.** Section 75-20-213, MCA, is amended to read:

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

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

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

22

23           **Section 10.** Section 75-20-215, MCA, is amended to read:

24           **"75-20-215. Filing fee -- accountability -- refund -- use.** (1) (a) A filing fee ~~shall~~ must be deposited  
25 in the state special revenue fund for the use of the department in administering this chapter. The applicant  
26 shall pay to the department a filing fee as provided in this section based upon the department's estimated  
27 costs of processing the application under this chapter, ~~but which shall~~. The filing fee may not exceed the  
28 following scale based upon the estimated cost of the facility:

29           (i) 4% of any estimated cost up to \$1 million; plus

30           (ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus



- 1 (iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus  
2 (iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus  
3 (v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus  
4 (vi) 0.05% of any amount of estimated cost over \$1 billion.

5 (b) The department ~~may allow in its discretion~~ shall grant a credit against the fee payable under  
6 this section for the development of information or providing of services required ~~hereunder~~ under this  
7 chapter or required for preparation of an environmental impact statement under the Montana or national  
8 environmental policy acts. The applicant may submit the information to the department together with an  
9 accounting of the expenses incurred in preparing the information. The department shall evaluate the  
10 applicability, validity, and usefulness of the data and determine the amount which may be credited against  
11 the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time  
12 be reduced if the department ~~determines~~ determines documents to the applicant that it is necessary to carry out its  
13 responsibilities under this chapter.

14 (2) (a) The department may contract with an applicant for the development of information,  
15 provision of services and payment of fees required under this chapter. The contract may continue an  
16 agreement entered into pursuant to 75-20-106. Payments made to the department under ~~such~~ a contract  
17 ~~shall~~ must be credited against the fee payable ~~hereunder~~ under this section. Notwithstanding the provisions  
18 of this section, the revenue derived from the filing fee must be sufficient to enable the department, the  
19 department of health, the board, and the board of health, ~~and the agencies listed in 75-20-216(5)~~ to carry  
20 out their responsibilities under this chapter. The department may amend a contract to require additional  
21 payments for necessary expenses up to the limits set forth in subsection (1)(a) ~~above~~ upon 30 days' notice  
22 to the applicant. The department and applicant may enter into a contract which exceeds the scale provided  
23 in subsection (1)(a).

24 (b) If a contract is not entered into, the applicant shall pay the filing fee in installments in  
25 accordance with a schedule of installments developed by the department, provided that no one installment  
26 may exceed 20% of the total filing fee provided for in subsection (1).

27 (3) The estimated cost of upgrading an existing transmission substation may not be included in the  
28 estimated cost of a proposed facility for the purpose of calculating a filing fee.

29 (4) If an application consists of a combination of two or more facilities, the filing fee ~~shall~~ must be  
30 based on the total estimated cost of the combined facilities.

1 (5) The applicant is entitled to an accounting of moneys expended and to a refund with interest  
 2 at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out  
 3 its responsibilities under this chapter. A refund ~~shall~~ must be made after all administrative and judicial  
 4 remedies have been exhausted by all parties to the certification proceedings.

5 (6) The revenues derived from filing fees ~~shall~~ must be used by the department in compiling the  
 6 information required for rendering a decision on a certificate and for carrying out its and the board's other  
 7 responsibilities under this chapter."

8  
 9 **Section 11.** Section 75-20-216, MCA, is amended to read:

10 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.** (1)  
 11 After receipt of an application, the department and department of health shall within 90 days notify the  
 12 applicant in writing that:

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

14 (b) the application is not in compliance and list the deficiencies ~~therein; and upon~~ Upon correction  
 15 of these deficiencies and resubmission by the applicant, the department and department of health shall  
 16 within 30 days notify the applicant in writing that the application is in compliance and is accepted as  
 17 complete.

18 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and  
 19 this section, the department shall commence an intensive study and evaluation of the proposed facility and  
 20 its effects, considering all applicable criteria listed in 75-20-301 ~~and 75-20-503~~ and the department of  
 21 health shall commence a study to enable it or the board of health to issue a decision, opinion, order,  
 22 certification, or permit as provided in subsection (3). The department and department of health shall use,  
 23 to the extent they consider applicable, valid and useful existing studies and reports submitted by the  
 24 applicant or compiled by a state or federal agency.

25 (3) The department of health shall within ~~4-year~~ 6 months following the date of acceptance of an  
 26 application and the board of health or department of health shall, if applicable, within an additional ~~6~~ 3  
 27 months, issue any decision, opinion, order, certification, or permit required under the laws administered by  
 28 the department of health or the board of health and this chapter. The department of health and the board  
 29 of health shall determine compliance with all standards, permit requirements, and implementation plans  
 30 under their jurisdiction for the proposed location or any proposed alternate location in their decision,

1 opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without  
 2 conditions, is conclusive on all matters that the department of health and board of health administer, ~~and~~  
 3 ~~any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the~~  
 4 ~~determinations made under the laws administered by the department of health and the board of health.~~  
 5 Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive,  
 6 the board retains authority to make the determination required under 75-20-301(2)(c). The decision,  
 7 opinion, order, certification, or permit of the department of health or the board of health satisfies the review  
 8 requirements by those agencies and ~~shall be~~ is acceptable in lieu of an environmental impact statement  
 9 under the Montana Environmental Policy Act. ~~A copy of the decision, opinion, order, certification, or permit~~  
 10 ~~shall be served upon the department and the board and shall be utilized as part of their final site selection~~  
 11 ~~process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules~~  
 12 ~~adopted by the board of health, the department of health shall provide an opportunity for public review and~~  
 13 ~~comment.~~

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

23 ~~(5) The departments of transportation; commerce; fish, wildlife, and parks; state lands; revenue;~~  
 24 ~~and public service regulation shall report to the department information relating to the impact of the~~  
 25 ~~proposed site on each department's area of expertise. The report may include opinions as to the advisability~~  
 26 ~~of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing~~  
 27 ~~fees to the departments making reports to reimburse them for the costs of compiling information and~~  
 28 ~~issuing the required report."~~

29

30 **Section 12.** Section 75-20-217, MCA, is amended to read:

1           **"75-20-217. Voiding an application.** An application may be voided by the department following  
2 notice and an opportunity for hearing for:

3           (1) any material and knowingly false statement in the application or in accompanying statements  
4 or studies required of the applicant;

5           (2) failure to file an application in substantially the form and content required by this chapter and  
6 the rules adopted ~~thereunder~~ under this chapter; or

7           (3) failure to deposit the filing fee as provided in 75-20-215."  
8

9           **Section 13.** Section 75-20-219, MCA, is amended to read:

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

19           (2) In those cases ~~where~~ in which the department determines that the proposed change in the  
20 facility would not result in a material increase in any environmental impact or would not be a substantial  
21 change in the location of all or a portion of the facility, the board shall automatically grant the amendment  
22 either as applied for or upon ~~such~~ terms or conditions ~~as~~ that the board considers appropriate unless the  
23 department's determination is appealed to the board within 15 days after notice of the department's  
24 determination is given.

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

29           (4) If the department determines that the proposed change in the facility would not result in a  
30 material increase in any environmental impact or would not be a substantial change in the location of all

1 or a portion of the facility and a hearing is required because the department's determination is appealed to  
2 the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing  
3 evidence that the proposed change in the facility would result in a material increase in any environmental  
4 impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in  
5 the certificate.

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

10

11 **Section 14.** Section 75-20-220, MCA, is amended to read:

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

19 (2) A prehearing conference ~~shall~~ must be held following notice within ~~60~~ 30 days after the  
20 department's report has been filed with the board.

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

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

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

1 (6) The hearing examiner shall allow discovery, which ~~shall~~ must be completed before the  
2 commencement of the hearing, upon good cause shown and under ~~such~~ other conditions as the hearing  
3 examiner shall prescribe.

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

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

14 (9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and  
15 shall, within ~~60~~ 30 days of that date, prepare and submit to the board and in the case of a conjunctive  
16 hearing, within ~~90~~ 45 days to the board and the board of health or department of health proposed findings  
17 of fact, conclusions of law, and a recommended decision.

18 (10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall  
19 insure that the time of the proceeding, from the date the department's report is filed with the board until  
20 the recommended report and order of the examiner is filed with the board, does not exceed ~~9~~ 3 calendar  
21 months unless extended by the board for good cause.

22 (11) The board or hearing examiner may waive all or a portion of the procedures set forth in  
23 subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has  
24 recommended approval of a facility and no objections have been filed."  
25

26 **Section 15.** Section 75-20-221, MCA, is amended to read:

27 **"75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1)

28 The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion,  
29 order, certification, or permit by the board of health under this chapter may include as active parties:

30 (a) the applicant;

1 (b) each ~~political entity,~~ unit of local government, and government agency, including the  
2 department of health, entitled to receive service of a copy of the application under 75-20-211(3); and

3 ~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~

4 ~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty;~~  
5 ~~to protect the environment, personal health, or other biological values; to preserve historical sites; to~~  
6 ~~promote consumer interests; to represent commercial and industrial groups; or to promote the orderly~~  
7 ~~development of the areas in which the facility is to be located;~~

8 ~~(e)~~ (c) any other interested person who establishes an interest in the proceeding.

9 (2) The department ~~shall be~~ is an active party in any certification proceeding in which the  
10 department recommends denial of all or a portion of a facility.

11 ~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen~~  
12 ~~and any party referred to in (b), (c), (d), or (e) of subsection (1).~~

13 ~~(4)~~ (3) Any party waives the right to be a party if the party does not participate in the hearing  
14 before the board or the board of health.

15 ~~(5)~~ (4) Each unit of local government entitled to receive service of a copy of the application under  
16 ~~75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends  
17 to participate in the certification proceeding. ~~If the unit of local government does not intend to participate,~~  
18 ~~it shall list in this statement its reasons for failing to do so. This statement of intent shall be published~~  
19 ~~before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable~~  
20 ~~unit of local government."~~

21  
22 **Section 16.** Section 75-20-222, MCA, is amended to read:

23 **"75-20-222. Record of hearing -- procedure -- rules of evidence -- burden of proof.** (1) Any studies,  
24 investigations, reports, or other documentary evidence, including those prepared by the department, which  
25 any party wishes the board to consider or which the board itself expects to ~~utilize~~ use or rely upon shall  
26 must be made a part of the record.

27 (2) A record ~~shall~~ must be made of the hearing and of all testimony taken.

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

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

7  
 8 **Section 17.** Section 75-20-225, MCA, is amended to read:

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

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

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

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

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

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

26  
 27 **Section 18.** Section 75-20-226, MCA, is amended to read:

28 **"75-20-226. Renewal study.** (1) Upon receipt of a completed application for renewal of a  
 29 certificate, the department shall evaluate the updated information and any significant changes in need,  
 30 alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken



1 place since the original study performed in granting the certificate, considering the applicable criteria listed  
 2 in 75-20-301 ~~and 75-20-503~~ and the original board findings and certificate conditions.

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

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

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

21  
 22 **Section 19.** Section 75-20-227, MCA, is amended to read:

23 **"75-20-227. Certificate renewal hearing -- decision.** (1) The board shall follow the provisions of  
 24 75-20-218 through 75-20-222 in making decisions on certificate renewals.

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

29 (3) The board may not renew a certificate either as proposed by the applicant or as modified by  
 30 the board unless it finds and determines the criteria in 75-20-301 ~~and 75-20-503~~, considering any

1 significant changes in need, alternatives, technology, baseline environment, and environmental impact."

2

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

4 **"75-20-301. Decision of board -- findings necessary for certification.** (1) Within 60 days after  
5 submission of the recommended decision by the hearing examiner, the board shall make complete findings,  
6 issue an opinion, and render a decision upon the record, either granting or denying the application as filed  
7 or granting it upon ~~such~~ terms, conditions, or modifications of the construction, operation, or maintenance  
8 of the facility as the board considers appropriate.

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

11 (a) ~~the basis of the need for the facility;~~

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

13 ~~(c) that the facility minimizes adverse environmental impact, considering the state of available~~  
14 ~~technology and the nature and economics of the various alternatives;~~

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

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

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

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

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

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

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

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

29 ~~(i) that the use of public lands for location of the facility was evaluated and public lands were~~  
30 ~~selected whenever their use is as economically practicable as the use of private lands and compatible with~~

1 ~~the environmental criteria listed in 75-20-503.~~

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

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

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

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

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

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

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

11

12 **Section 21.** Section 75-20-303, MCA, is amended to read:

13 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
 14 for a certificate, the board shall issue an opinion stating its reasons for the action taken.

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

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

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

21 (i) the environmental impact of the proposed facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18  
19 **Section 22.** Section 75-20-304, MCA, is amended to read:

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

26 (2) The board may waive compliance with any of the provisions of this chapter upon receipt of  
27 notice by a person subject to this chapter that a facility or associated facility has been damaged or  
28 destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other  
29 civil disorder and there exists an immediate need for construction of a new facility or associated facility or  
30 the relocation of a previously existing facility or associated facility in order to promote the public welfare.

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

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

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

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

12           ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the~~  
13 ~~facility is proposed to be located.~~

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

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

22           ~~(6) (3)~~ The applicant shall pay all expenses required to process and conduct a hearing on a waiver  
23 request ~~under subsection (3)~~. However, any payments made under this subsection ~~shall~~ must be credited  
24 toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the  
25 decision of the board under ~~subsection (3)~~ this section can be used in making a certification decision under  
26 this chapter.

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

29  
30           **Section 23.** Section 75-20-402, MCA, is amended to read:

1           "**75-20-402. Monitoring.** ~~The board, the department, the department of health, and the board of~~  
 2 health shall monitor the operations of all certificated facilities ~~for assuring to ensure~~ continuing compliance  
 3 with this chapter and certificates issued ~~hereunder~~ under this chapter and ~~for discovering to discover~~ and  
 4 ~~preventing prevent~~ noncompliance with this chapter and the certificates. ~~The applicant shall pay all~~  
 5 expenses related to the monitoring plan established in subsection (3)(b) or (3)(c) of 75-20-303 to the extent  
 6 federal funds available for the facility, as determined by the department of health, have not been provided  
 7 for such purposes."

8  
 9           **Section 24.** Section 75-20-403, MCA, is amended to read:

10           "**75-20-403. Revocation or suspension of certificate.** Following notice and an opportunity for a  
 11 hearing, a certificate may be revoked or suspended by the board:

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

14           ~~(2) for failure to maintain safety standards or to comply with the terms or conditions of the~~  
 15 certificate; or

16           ~~(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board~~  
 17 or department."

18  
 19           **Section 25.** Section 75-20-406, MCA, is amended to read:

20           "**75-20-406. ~~Judicial review of board~~ Board, board of health, and department of health decisions.**

21           ~~(1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application~~  
 22 for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court  
 23 of competent jurisdiction.

24           ~~(2) The judicial review procedure shall be the same as that for contested cases under the Montana~~  
 25 ~~Administrative Procedure Act.~~

26           ~~(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3)~~  
 27 and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant  
 28 to the laws administered by the department of health and the board of health and this chapter, the decision  
 29 may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and

30 ~~(2).~~ If a permit or certification is denied by the department of health or the board of health, the applicant

1 may:

2 (a) appeal the denial under the appellate review procedures provided in the laws administered by  
3 the department of health and the board of health; or

4 (b) reserve the right to appeal the denial by the department of health or the board of health until  
5 after the board has issued a final decision.

6 ~~{4} (2) Nothing in this~~ This section may not be construed to prohibit the board from holding a  
7 hearing as ~~herein~~ provided in this section on all matters that are not the subject of a pending appeal by the  
8 applicant under subsection ~~(3)(a)~~ (1)(a)."

9

10 **Section 26.** Section 75-20-407, MCA, is amended to read:

11 **"75-20-407. Jurisdiction of courts restricted.** Except as expressly set forth in 75-20-401,  
12 75-20-406, and 75-20-408, ~~no~~ a court of this state ~~has~~ does not have jurisdiction to hear or determine any  
13 issue, case, or controversy concerning any matter ~~which~~ that was or could have been determined in a  
14 proceeding before the board under this chapter or to stop or delay the construction, operation, or  
15 maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate  
16 issued ~~hereunder~~ pursuant to ~~75-20-404~~ and 75-20-405 or 75-20-408."

17

18 **Section 27.** Section 75-20-408, MCA, is amended to read:

19 **"75-20-408. Penalties for violation of chapter -- civil action by attorney general.** (1) (a) ~~Whoever~~  
20 A person who commences to construct or operate a facility without first obtaining a certificate required  
21 under 75-20-201 or a waiver ~~thereof~~ under 75-20-304(2) or without ~~having~~ first having obtained a  
22 certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or  
23 violates any other provision of this chapter or any rule or order adopted ~~thereunder~~ under this chapter or  
24 knowingly submits false information in any report, ~~10-year plan,~~ or application required by this chapter or  
25 rule or order adopted ~~thereunder~~ under this chapter or causes any of the ~~above~~ mentioned acts to occur is  
26 liable for a civil penalty of not more than \$10,000 for each violation.

27 (b) Each day of a continuing violation constitutes a separate offense.

28 (c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state  
29 in the district court of the first judicial district of Montana.

30 ~~(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000~~

1 ~~for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation~~  
 2 ~~constitutes a separate offense.~~

3 ~~(3)~~ (2) In addition to any penalty provided in subsection (1) ~~or (2)~~, whenever the department  
 4 determines that a person is violating or is about to violate any of the provisions of this section, it may refer  
 5 the matter to the attorney general who may bring a civil action on behalf of the state in the district court  
 6 of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to  
 7 enforce this chapter or a certificate issued ~~hereunder~~ under this chapter. Upon a proper showing, a  
 8 permanent or preliminary injunction or temporary restraining order shall be granted without bond.

9 ~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the~~  
 10 ~~enforcement through its own legal counsel.~~

11 ~~(5)~~ (3) All fines and penalties collected ~~shall~~ must be deposited in the state special revenue fund  
 12 for the use of the department in administering this chapter."  
 13

14 **Section 28.** Section 85-15-107, MCA, is amended to read:

15 **"85-15-107. Exemptions.** (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through  
 16 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

17 (a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is  
 18 subject to the permit;

19 (b) federal dams and reservoirs;

20 (c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory  
 21 commission; or

22 (d) dams that are required to obtain a certificate of environmental compatibility ~~and public need~~  
 23 pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

24 (2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401,  
 25 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they  
 26 are subject to a dam safety review by a federal agency.

27 (3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site  
 28 as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
 29 (CERCLA), Public Law 96-510."  
 30



1            NEW SECTION. **Section 29. Repealer.** Sections 75-20-103, 75-20-302, 75-20-404, 75-20-409,  
2 75-20-501, 75-20-502, and 75-20-503, MCA, are repealed.

3

4            NEW SECTION. **Section 30. Effective date.** [This act] is effective on passage and approval.

5

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0366, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Major Facility Siting Act.

ASSUMPTIONS:

1. The number of applications filed under the Montana Major Facility Siting Act (MFSA) will decrease; therefore application fees and the revenues associated with those fees will decrease. The provisions in this act that allow counties to waive MFSA and change the size of a facility covered by MFSA will cause the decrease in the number of applications. Costs may increase for other state agencies having approval, permit or review responsibilities, but absent any MFSA coordinating role and fee provisions, there may not be sufficient fee revenue to cover costs of required actions.
2. General fund expenditures used to support MFSA administration have been pared to a minimum over the past few biennia. Therefore, general fund expenditures are not expected to be reduced through this bill because it supports the basic administrative functions of preapplication consultation with project sponsors, coordinating state agency and federal agency activities in Montana prior to submittal of an application, and providing general assistance to project sponsors regarding MFSA and administrative rules. A total of 4.70 FTE permanent staff provide this facility siting management.
3. Upon receipt of an application, one of the permanent staff oversees the process and the fees are used to retain temporary project staff and to contract out such work as wildlife, vegetation and air quality work, depending on the particular application.
4. This bill increases the trigger on the generating facilities and reduces that workload. Over 90% of the ongoing work of the DNRC Facility Siting Bureau relates to linear facilities such as transmission lines and pipe lines. It is unclear in this bill what happens to facilities that are in the process of or have already been certified.
5. The Department of Health and Environmental Sciences is given sole responsibility to monitor compliance under this law with no ability to recover costs for monitoring.
6. Because the number of applications filed with the DNRC will decrease, expenditures will decrease, with a corresponding decrease in revenue from applicant filing fees. The amount of this decrease cannot be estimated. DNRC also cannot estimate the amount of fiscal impacts on local governments, other state agencies, or the applicants under the siting process, but these impacts may be significant.

FISCAL IMPACT:

There may be significant impact, but amounts are not subject to reasonable estimate.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Costs to local governments may go up if they, in response to local concerns, choose to address project location through local zoning processes or procedures.

Dave Lewis 2-16-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

\_\_\_\_\_  
MACK COLE, PRIMARY SPONSOR      DATE

Fiscal Note for SB0366, as introduced

**SB 366**

## 1 SENATE BILL NO. 366

2 INTRODUCED BY COLE, HARGROVE, REHBEIN, FELAND, GAGE, STOVALL, KEATING

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY  
5 SITING ACT; AMENDING SECTIONS ~~75-20-102~~, 75-20-104, ~~75-20-201~~, 75-20-202, 75-20-203,  
6 ~~75-20-205~~, ~~75-20-211~~, 75-20-212, ~~75-20-213~~, ~~75-20-215~~, ~~75-20-216~~, 75-20-217, ~~75-20-219~~,  
7 75-20-220, 75-20-221, ~~75-20-222~~, ~~75-20-225~~, ~~75-20-226~~, ~~75-20-227~~, 75-20-301, AND 75-20-303,  
8 ~~75-20-304~~, ~~75-20-402~~, ~~75-20-403~~, ~~75-20-406~~, ~~75-20-407~~, ~~75-20-408~~, AND ~~85-15-107~~, MCA;  
9 REPEALING SECTIONS ~~75-20-103~~, ~~75-20-302~~, ~~75-20-404~~, ~~75-20-409~~, ~~75-20-501~~, SECTION 75-20-502,  
10 AND ~~75-20-503~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
11 PROVISION."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14  
15 ~~Section 1. Section 75-20-102, MCA, is amended to read:~~

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

20 ~~(2) The legislature finds that the construction of additional power or energy conversion facilities~~  
21 ~~may be necessary to meet the increasing need for electricity, energy, and other products and that these~~  
22 ~~facilities have an effect on the environment, an impact on population concentration, and an effect on the~~  
23 ~~welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and~~  
24 ~~operation of power and energy conversion facilities will produce minimal adverse effects on the environment~~  
25 ~~and upon the citizens of this state by providing that a power or energy conversion facility may not be~~  
26 ~~constructed or operated within this state without a certificate of environmental compatibility and public~~  
27 ~~need acquired pursuant to this chapter."~~

28  
29 ~~Section 1. Section 75-20-104, MCA, is amended to read:~~30 ~~"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following~~

1 definitions apply:

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

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

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

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

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

14 (6) "Certificate" means the certificate of environmental compatibility ~~and public need~~ AND PUBLIC  
15 NEED issued by the board under this chapter that is required for the construction or operation of a facility.

16 (7) "Commence to construct" means:

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

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

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

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

30 (8) "Department" means the department of natural resources and conservation provided for in Title

1 2, chapter 15, part 33.

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

4 (10) "Facility" means:

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

8 (i) generating ~~50~~ 150 megawatts of electricity or more or any addition thereto, ~~except pollution~~  
9 control facilities approved by the department of health ~~and environmental sciences~~ and added to an existing  
10 plant) ~~having an estimated cost in excess of \$10 million;~~

11 (ii) producing ~~25~~ 250 ~~25~~ million cubic feet or more of gas derived from coal per day ~~or any addition~~  
12 ~~thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO, EXCEPT  
13 POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN  
14 EXISTING PLANT;

15 (iii) producing ~~25,000~~ 100,000 ~~25,000~~ barrels of liquid hydrocarbon products per day or more ~~or~~  
16 ~~any addition thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO,  
17 EXCEPT POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED  
18 TO AN EXISTING PLANT; or

19 (iv) enriching uranium minerals ~~or any addition thereto having an estimated cost in excess of \$10~~  
20 ~~million; or~~ OR ANY ADDITION THERETO;

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

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

25 (i) does not include an electric transmission line and associated facilities of a design capacity of  
26 230 kilovolts or less and 10 miles or less in length; and

27 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts  
28 and up to and including 115 kilovolts for which the person planning to construct the line has obtained  
29 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively  
30 own more than 75% of the property along the centerline;

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

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

7 ~~(e) any underground in situ gasification of coal~~ OR ANY ADDITION THERETO, EXCEPT POLLUTION  
8 CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN EXISTING  
9 PLANT;

10 (E) ANY UNDERGROUND IN SITU GASIFICATION OF COAL.

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

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

16 (13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,  
17 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."  
18

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

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

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

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

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

1 ~~the laws of this state.~~

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

4

5 **Section 2.** Section 75-20-202, MCA, is amended to read:

6 **"75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under  
 7 diligent onsite physical construction or in operation on January 1, 1973.

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

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

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

13 (ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of  
 14 which will result in greater efficiency, promote energy conservation, and promote greater system reliability  
 15 than the existing facility.

16 ~~(3) The board shall waive compliance with the requirements of this chapter if the applicant makes~~  
 17 ~~a clear and convincing showing to the board at a public hearing that:~~

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

21 ~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be~~  
 22 ~~located support a waiver by resolution;~~

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

25 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the~~  
 26 ~~facility is proposed to be located.~~

27 ~~(3)(4)(3)~~ A person proposing to construct an exempt facility shall pay to the department reasonable  
 28 costs, if any, incurred by the department in processing the exemption.

29 ~~(4) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated~~  
 30 ~~by the governor for environmental review by an executive agency of the state for the purpose of complying~~

1 with Title 75, chapter 1, pursuant to Executive Order 4 81 and prior to July 1, 1985."

2  
3 **Section 3.** Section 75-20-203, MCA, is amended to read:

4 "75-20-203. **Certificate transferable.** A certificate may be transferred, subject to the approval of  
5 the board, to a person who agrees to comply with the terms, conditions, and modifications contained  
6 therein in the certificate."

7  
8 ~~**Section 6.** Section 75-20-205, MCA, is amended to read:~~

9 ~~"75-20-205. **Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and  
10 associated facilities certified under this chapter, the board shall condition the certificate upon board  
11 approval of a final centerline location.~~

12 ~~(2) The final centerline location must be determined in a noncontested case proceeding before the  
13 board after the submission of a centerline location report by the department. Within 60 days after the  
14 commencement of a noncontested case proceeding, the board shall render and record a decision approving  
15 a centerline location.~~

16 ~~(3) The department shall consult with the certificate holder and the affected landowners prior to  
17 making its report.~~

18 ~~(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and  
19 75-20-503 and the findings of fact and conclusions of law set out in the board decision.~~

20 ~~(5) The department report may be completed on segments of a certified facility as is convenient  
21 to the certificate holder.~~

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

26  
27 ~~**Section 7.** Section 75-20-211, MCA, is amended to read:~~

28 ~~"75-20-211. **Application filing and contents proof of service and notice.** (1) (a) An applicant  
29 shall file with the department and department of health a joint application for a certificate under this chapter  
30 and for the permits required under the laws administered by the department of health and the board of~~



1 health in such ~~the~~ form as the board requires under applicable rules, containing the following information:

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

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

5 ~~(iii) a statement explaining the need for the facility;~~

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

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

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

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

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

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

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

22 ~~(3) An application shall be accompanied by proof of service of a copy of the application on the~~  
23 ~~chief executive officer of each unit of local government, county commissioner, city or county planning~~  
24 ~~boards, and federal agencies charged with the duty of protecting the environment or of planning land use~~  
25 ~~in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be~~  
26 ~~located and on the following state government agencies:~~

27 ~~(a) environmental quality council;~~

28 ~~(b) department of public service regulation;~~

29 ~~(c) department of fish, wildlife, and parks;~~

30 ~~(d) department of state lands;~~

1 ~~(e) department of commerce;~~

2 ~~(f) department of transportation.~~

3 ~~(4) (3) The copy of the application shall must be accompanied by a notice specifying the date on~~  
 4 ~~or about which the application is to be filed.~~

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

9  
 10 **Section 4.** Section 75-20-212, MCA, is amended to read:

11 "75-20-212. **Cure for failure of service.** Inadvertent failure of service on or notice to any of the  
 12 municipalities, government agencies, or persons identified in ~~75-20-211(3) and (5)~~ 75-20-211 may be cured  
 13 pursuant to orders of the department designed to afford them adequate notice to enable their effective  
 14 participation in the proceeding."

15  
 16 **Section 9.** ~~Section 75-20-213, MCA, is amended to read:~~

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

21 ~~(2) An application may be amended by an applicant any time prior to the department's~~  
 22 ~~recommendation. If the proposed amendment is such that it prevents the department, or the department~~  
 23 ~~of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under~~  
 24 ~~this chapter, the department may require such additional filing fees as the department determines justifies~~  
 25 ~~to the applicant as necessary, or the department may require a new application and filing fee.~~

26 ~~(3) The applicant shall submit supplemental material in a timely manner as requested by the~~  
 27 ~~department or as offered by the applicant to explain, support, or provide the detail with respect to an item~~  
 28 ~~described in the original application, without filing an application for an amendment. The department's~~  
 29 ~~determination as to whether information is supplemental or whether an application for amendment is~~  
 30 ~~required shall be conclusive."~~

1           ~~Section 10. Section 75-20-215, MCA, is amended to read:~~

2           ~~"75-20-215. Filing fee—accountability—refund—use. (1) (a) A filing fee shall must be deposited~~  
 3 ~~in the state special revenue fund for the use of the department in administering this chapter. The applicant~~  
 4 ~~shall pay to the department a filing fee as provided in this section based upon the department's estimated~~  
 5 ~~costs of processing the application under this chapter, but which shall, The filing fee may not exceed the~~  
 6 ~~following scale based upon the estimated cost of the facility:~~

7           ~~(i) 4% of any estimated cost up to \$1 million; plus~~

8           ~~(ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus~~

9           ~~(iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus~~

10          ~~(iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus~~

11          ~~(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus~~

12          ~~(vi) 0.05% of any amount of estimated cost over \$1 billion.~~

13          ~~(b) The department may allow in its discretion shall grant a credit against the fee payable under~~  
 14 ~~this section for the development of information or providing of services required hereunder under this~~  
 15 ~~chapter or required for preparation of an environmental impact statement under the Montana or national~~  
 16 ~~environmental policy acts. The applicant may submit the information to the department together with an~~  
 17 ~~accounting of the expenses incurred in preparing the information. The department shall evaluate the~~  
 18 ~~applicability, validity, and usefulness of the data and determine the amount which may be credited against~~  
 19 ~~the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time~~  
 20 ~~be reduced if the department determines documents to the applicant that it is necessary to carry out its~~  
 21 ~~responsibilities under this chapter.~~

22          ~~(2) (a) The department may contract with an applicant for the development of information,~~  
 23 ~~provision of services and payment of fees required under this chapter. The contract may continue an~~  
 24 ~~agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract~~  
 25 ~~shall must be credited against the fee payable hereunder under this section. Notwithstanding the provisions~~  
 26 ~~of this section, the revenue derived from the filing fee must be sufficient to enable the department, the~~  
 27 ~~department of health, the board, and the board of health, and the agencies listed in 75-20-216(5) to carry~~  
 28 ~~out their responsibilities under this chapter. The department may amend a contract to require additional~~  
 29 ~~payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice~~  
 30 ~~to the applicant. The department and applicant may enter into a contract which exceeds the scale provided~~

1 in subsection (1)(a).

2 (b) ~~If a contract is not entered into, the applicant shall pay the filing fee in installments in~~  
3 ~~accordance with a schedule of installments developed by the department, provided that no one installment~~  
4 ~~may exceed 20% of the total filing fee provided for in subsection (1).~~

5 (3) ~~The estimated cost of upgrading an existing transmission substation may not be included in the~~  
6 ~~estimated cost of a proposed facility for the purpose of calculating a filing fee.~~

7 (4) ~~If an application consists of a combination of two or more facilities, the filing fee shall must be~~  
8 ~~based on the total estimated cost of the combined facilities.~~

9 (5) ~~The applicant is entitled to an accounting of moneys expended and to a refund with interest~~  
10 ~~at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out~~  
11 ~~its responsibilities under this chapter. A refund shall must be made after all administrative and judicial~~  
12 ~~remedies have been exhausted by all parties to the certification proceedings.~~

13 (6) ~~The revenues derived from filing fees shall must be used by the department in compiling the~~  
14 ~~information required for rendering a decision on a certificate and for carrying out its and the board's other~~  
15 ~~responsibilities under this chapter."~~

16

17 **Section 11.** ~~Section 75-20-216, MCA, is amended to read:~~

18 ~~"75-20-216. Study, evaluation, and report on proposed facility—assistance by other agencies. (1)~~

19 ~~After receipt of an application, the department and department of health shall within 90 days notify the~~  
20 ~~applicant in writing that:~~

21 (a) ~~the application is in compliance and is accepted as complete; or~~

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

26 (2) ~~Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and~~  
27 ~~this section, the department shall commence an intensive study and evaluation of the proposed facility and~~  
28 ~~its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of~~  
29 ~~health shall commence a study to enable it or the board of health to issue a decision, opinion, order,~~  
30 ~~certification, or permit as provided in subsection (3). The department and department of health shall use,~~

1 ~~to the extent they consider applicable, valid and useful existing studies and reports submitted by the~~  
2 ~~applicant or compiled by a state or federal agency.~~

3 ~~(3) The department of health shall within 1 year 6 months following the date of acceptance of an~~  
4 ~~application and the board of health or department of health shall, if applicable, within an additional 6 3~~  
5 ~~months, issue any decision, opinion, order, certification, or permit required under the laws administered by~~  
6 ~~the department of health or the board of health and this chapter. The department of health and the board~~  
7 ~~of health shall determine compliance with all standards, permit requirements, and implementation plans~~  
8 ~~under their jurisdiction for the proposed location or any proposed alternate location in their decision,~~  
9 ~~opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without~~  
10 ~~conditions, is conclusive on all matters that the department of health and board of health administer, and~~  
11 ~~any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the~~  
12 ~~determinations made under the laws administered by the department of health and the board of health.~~  
13 ~~Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive,~~  
14 ~~the board retains authority to make the determination required under 75-20-301(2)(c). The decision,~~  
15 ~~opinion, order, certification, or permit of the department of health or the board of health satisfies the review~~  
16 ~~requirements by those agencies and shall be is acceptable in lieu of an environmental impact statement~~  
17 ~~under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit~~  
18 ~~shall be served upon the department and the board and shall be utilized as part of their final site selection~~  
19 ~~process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules~~  
20 ~~adopted by the board of health, the department of health shall provide an opportunity for public review and~~  
21 ~~comment.~~

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

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

7  
 8           **Section 5.** Section 75-20-217, MCA, is amended to read:

9           **"75-20-217. Voiding an application.** An application may be voided by the department following  
 10 notice and an opportunity for hearing for:

11           (1) any material and knowingly false statement in the application or in accompanying statements  
 12 or studies required of the applicant;

13           (2) failure to file an application in substantially the form and content required by this chapter and  
 14 the rules adopted ~~thereunder~~ under this chapter; or

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

16  
 17           ~~**Section 13.** Section 75-20-219, MCA, is amended to read:~~

18           ~~**"75-20-219. Amendments to a certificate.** (1) Within 30 days after notice of an amendment to a~~  
 19 ~~certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original~~  
 20 ~~proceeding, the department shall determine whether the proposed change in the facility would result in a~~  
 21 ~~material increase in any environmental impact of the facility or a substantial change in the location of all~~  
 22 ~~or a portion of the facility as set forth in the certificate. If the department determines that the proposed~~  
 23 ~~change would result in a material increase in any environmental impact of the facility or a substantial~~  
 24 ~~change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner~~  
 25 ~~as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify~~  
 26 ~~the amendment with such conditions as it deems that are documented as appropriate.~~

27           ~~(2) In those cases where in which the department determines that the proposed change in the~~  
 28 ~~facility would not result in a material increase in any environmental impact or would not be a substantial~~  
 29 ~~change in the location of all or a portion of the facility, the board shall automatically grant the amendment~~  
 30 ~~either as applied for or upon such terms or conditions as that the board considers appropriate unless the~~

1 ~~department's determination is appealed to the board within 15 days after notice of the department's~~  
2 ~~determination is given.~~

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

7 ~~(4) If the department determines that the proposed change in the facility would not result in a~~  
8 ~~material increase in any environmental impact or would not be a substantial change in the location of all~~  
9 ~~or a portion of the facility and a hearing is required because the department's determination is appealed to~~  
10 ~~the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing~~  
11 ~~evidence that the proposed change in the facility would result in a material increase in any environmental~~  
12 ~~impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in~~  
13 ~~the certificate.~~

14 ~~(5) If an amendment is required to a certificate which is required that would affect, amend, alter~~  
15 ~~or modify a decision, opinion, order, certification, or permit issued by the department of health or board of~~  
16 ~~health, such the amendment must be processed under the applicable statutes administered by the~~  
17 ~~department of health or board of health."~~

18

19 **Section 6.** Section 75-20-220, MCA, is amended to read:

20 **"75-20-220. Hearing examiner -- restrictions -- duties.** (1) If the board appoints a hearing examiner  
21 to conduct any certification proceedings under this chapter, the hearing examiner may not be a member  
22 of the board, an employee of the department, or a member or employee of the department of health or  
23 board of health. A hearing examiner, if any, ~~shall~~ must be appointed by the board within 20 days after the  
24 department's report has been filed with the board. If a hearing is held before the board of health or the  
25 department of health, the board and the board of health or the department of health shall mutually agree  
26 on the appointment of a hearing examiner to preside at both hearings.

27 (2) A prehearing conference ~~shall~~ must be held following notice within ~~60~~ 30 45 days after the  
28 department's report has been filed with the board.

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

30 (4) The prehearing conference ~~shall~~ must be directed toward a determination of the issues

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

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

9 (6) The hearing examiner shall allow discovery, which ~~shall~~ must be completed before the  
10 commencement of the hearing, upon good cause shown and under ~~such~~ other conditions as the hearing  
11 examiner shall prescribe.

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

15 (8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law,  
16 identifying the witnesses of the active parties, naming the public witnesses and other interested parties who  
17 have submitted written testimony in lieu of appearance, outlining the order in which the hearing ~~shall~~ must  
18 proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised  
19 ~~which~~ that are to be conclusively presumed and are not subject to further proof except for good cause  
20 shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the  
21 approval of the board.

22 (9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and  
23 shall, within ~~60~~ ~~30~~ 45 days of that date, prepare and submit to the board and in the case of a conjunctive  
24 hearing, within ~~90~~ ~~45~~ 60 days to the board and the board of health or department of health proposed  
25 findings of fact, conclusions of law, and a recommended decision.

26 (10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall  
27 insure that the time of the proceeding, from the date the department's report is filed with the board until  
28 the recommended report and order of the examiner is filed with the board, does not exceed ~~9~~ ~~3~~ 8 calendar  
29 months unless extended by the board for good cause.

30 (11) The board or hearing examiner may waive all or a portion of the procedures set forth in



1 subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has  
2 recommended approval of a facility and no objections have been filed."

3

4 **Section 7.** Section 75-20-221, MCA, is amended to read:

5 **"75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1)

6 The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion,  
7 order, certification, or permit by the board of health under this chapter may include as active parties:

- 8 (a) the applicant;
- 9 (b) each ~~political entity~~, unit of local government, and government agency, including the  
10 department of health, entitled to receive service of a copy of the application under 75-20-211(3); and
- 11 ~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~
- 12 ~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty;~~  
13 ~~to protect the environment, personal health, or other biological values; to preserve historical sites; to~~  
14 ~~promote consumer interests; to represent commercial and industrial groups; or to promote the orderly~~  
15 ~~development of the areas in which the facility is to be located;~~

16 (C) ANY PERSON ENTITLED TO RECEIVE SERVICE OF A COPY OF THE APPLICATION UNDER  
17 75-20-211(5);

18 (D) ANY NONPROFIT ORGANIZATION FORMED IN WHOLE OR IN PART TO PROMOTE  
19 CONSERVATION OR NATURAL BEAUTY; TO PROTECT THE ENVIRONMENT, PERSONAL HEALTH, OR  
20 OTHER BIOLOGICAL VALUES; TO PRESERVE HISTORICAL SITES; TO PROMOTE CONSUMER INTERESTS;  
21 TO REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS; OR TO PROMOTE THE ORDERLY  
22 DEVELOPMENT OF THE AREAS IN WHICH THE FACILITY IS TO BE LOCATED;

23 ~~(e)(E)~~ (E) any other interested person who establishes an interest in the proceeding.

24 (2) The department ~~shall be~~ is an active party in any certification proceeding in which the  
25 department recommends denial of all or a portion of a facility.

26 ~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen~~  
27 ~~and any party referred to in (b), (c), (d), or (e) of subsection (1).~~

28 (3) THE PARTIES TO A CERTIFICATION PROCEEDING MAY ALSO INCLUDE, AS PUBLIC PARTIES,  
29 ANY MONTANA CITIZEN AND ANY PARTY REFERRED TO IN SUBSECTIONS (1)(B) THROUGH (1)(E).

30 ~~(4)(3)(4)~~ Any party waives the right to be a party if the party does not participate in the hearing

1 before the board or the board of health.

2 ~~(5)(4)(5)~~ Each unit of local government entitled to receive service of a copy of the application under  
 3 ~~75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends  
 4 to participate in the certification proceeding. ~~If the unit of local government does not intend to participate,~~  
 5 ~~it shall list in this statement its reasons for failing to do so. This statement of intent shall be published~~  
 6 ~~before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable~~  
 7 ~~unit of local government."~~

8

9 **Section 16.** ~~Section 75-20-222, MCA, is amended to read:~~

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

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

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

18 (4) ~~All proceedings under this chapter are governed by the procedures set forth in this chapter, the~~  
 19 ~~procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of~~  
 20 ~~evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties~~  
 21 ~~to the hearing. No other rules of procedure or evidence shall apply except that the contested case~~  
 22 ~~procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures~~  
 23 ~~set forth in this chapter or the procedural rules adopted by the board."~~

24

25 **Section 17.** ~~Section 75-20-225, MCA, is amended to read:~~

26 ~~"75-20-225. Certificate renewal application contents filing fee.~~ (1) Any certificate holder for  
 27 a facility as defined in ~~75-20-104(10)(a)(i)~~ may apply for renewal of a certificate prior to the certificate  
 28 lapsing.

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

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

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

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

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

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

13  
 14           ~~**Section 18.** Section 75-20-226, MCA, is amended to read:~~

15           ~~"75-20-226. **Renewal study.** (1) Upon receipt of a completed application for renewal of a~~  
 16 ~~certificate, the department shall evaluate the updated information and any significant changes in need,~~  
 17 ~~alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken~~  
 18 ~~place since the original study performed in granting the certificate, considering the applicable criteria listed~~  
 19 ~~in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.~~

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

24           ~~(3) Within 12 months following acceptance of a complete application for renewal of a certificate,~~  
 25 ~~the department shall make a report to the board. This report must contain the department's studies,~~  
 26 ~~evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and~~  
 27 ~~an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act.~~  
 28 ~~The department's report must be directed to the question of whether the original board findings and~~  
 29 ~~conditions have been or need to be altered as a result of any significant changes in need, alternatives,~~  
 30 ~~technology, baseline environment, or environmental impact since issuance of the certificate, considering~~

1 the applicable criteria listed in ~~75-20-301 and 75-20-503.~~

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

8

9 ~~Section 19.~~ Section 75-20-227, MCA, is amended to read:

10 ~~"75-20-227. Certificate renewal hearing — decision.~~ (1) The board shall follow the provisions of  
 11 ~~75-20-218 through 75-20-222 in making decisions on certificate renewals.~~

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

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

19

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

21 **"75-20-301. Decision of board -- findings necessary for certification.** (1) Within 60 days after  
 22 submission of the recommended decision by the hearing examiner, the board shall make complete findings,  
 23 issue an opinion, and render a decision upon the record, either granting or denying the application as filed  
 24 or granting it upon ~~such~~ terms, conditions, or modifications of the construction, operation, or maintenance  
 25 of the facility as the board considers appropriate.

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

28 (a) ~~the basis of the need for the facility;~~ THE BASIS OF THE NEED FOR THE FACILITY;

29 ~~(b)~~ (B) the nature of the probable environmental impact;

30 ~~(c) that the facility minimizes adverse environmental impact, considering the state of available~~

1 ~~technology and the nature and economics of the various alternatives;~~

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

3 (C) THAT THE FACILITY MINIMIZES ADVERSE ENVIRONMENTAL IMPACT, CONSIDERING THE  
 4 STATE OF AVAILABLE TECHNOLOGY AND THE NATURE AND ECONOMICS OF THE VARIOUS  
 5 ALTERNATIVES;

6 (D) EACH OF THE CRITERIA LISTED IN 75-20-503;

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

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

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

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

12 ~~(f)(F)~~ that the location of the facility as proposed conforms to applicable state ~~and local~~ AND  
 13 LOCAL laws and regulations ~~issued thereunder, except that the board may refuse to apply any local law~~  
 14 ~~or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably~~  
 15 ~~restrictive in view of the existing technology, of factors of cost or economics, or of the needs of~~  
 16 ~~consumers, whether located inside or outside of the directly affected government subdivisions , EXCEPT~~  
 17 THAT THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF IT FINDS THAT, AS  
 18 APPLIED TO THE PROPOSED FACILITY, THE LAW OR REGULATION IS UNREASONABLY RESTRICTIVE IN  
 19 VIEW OF THE EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF THE NEEDS OF  
 20 CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF THE DIRECTLY AFFECTED GOVERNMENT  
 21 SUBDIVISIONS; and

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

23 (G) THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

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

26 ~~(i) that the use of public lands for location of the facility was evaluated and public lands were~~  
 27 ~~selected whenever their use is as economically practicable as the use of private lands and compatible with~~  
 28 ~~the environmental criteria listed in 75-20-503.~~

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

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

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

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

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

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

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

8 (1) THAT THE USE OF PUBLIC LANDS FOR LOCATION OF THE FACILITY WAS EVALUATED AND  
 9 PUBLIC LANDS WERE SELECTED WHENEVER THEIR USE IS AS ECONOMICALLY PRACTICABLE AS THE  
 10 USE OF PRIVATE LANDS AND COMPATIBLE WITH THE ENVIRONMENTAL CRITERIA LISTED IN  
 11 75-20-503.

12 (3) IN DETERMINING THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE,  
 13 AND NECESSITY UNDER SUBSECTION (2)(G), THE BOARD SHALL CONSIDER:

14 (A) THE ITEMS LISTED IN SUBSECTIONS (2)(A) AND (2)(B);

15 (B) THE BENEFITS TO THE APPLICANT AND THE STATE RESULTING FROM THE PROPOSED  
 16 FACILITY;

17 (C) THE EFFECTS OF THE ECONOMIC ACTIVITY RESULTING FROM THE PROPOSED FACILITY;

18 (D) THE EFFECTS OF THE PROPOSED FACILITY ON THE PUBLIC HEALTH, WELFARE, AND  
 19 SAFETY;

20 (E) ANY OTHER FACTORS THAT IT CONSIDERS RELEVANT.

21 (4) CONSIDERATIONS OF NEED, PUBLIC NEED, OR PUBLIC CONVENIENCE AND NECESSITY AND  
 22 DEMONSTRATION THEREOF BY THE APPLICANT APPLY ONLY TO UTILITY FACILITIES DESCRIBED IN  
 23 75-20-104(10)(A)(I), (10)(B), (10)(C), AND (10)(D)."

24  
 25 **Section 9.** Section 75-20-303, MCA, is amended to read:

26 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
 27 for a certificate, the board shall issue an opinion stating its reasons for the action taken.

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

- 1 (3) Any certificate issued by the board ~~shall~~ must include the following:
- 2 (a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~  
3 must include but not be limited to analysis of the following information:
- 4 (i) the environmental impact of the proposed facility; and
- 5 (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;
- 6 ~~(iii) problems and objections raised by other federal and state agencies and interested groups; and~~
- 7 ~~(iv) alternatives to the proposed facility;~~
- 8 (b) a plan for monitoring environmental effects of the proposed facility;
- 9 (c) a plan for monitoring the certified facility site between the time of certification and completion  
10 of construction;
- 11 (d) a time limit as provided in subsection (4); and
- 12 (e) a statement signed by the applicant showing agreement to comply with the requirements of this  
13 chapter and the conditions of the certificate.
- 14 (4) (a) The board shall issue as part of the certificate the following time limits:
- 15 (i) For a facility as defined in ~~(b) or (c) of 75-20-104(10)(b) or (10)(c)~~ (b) or (c) of 75-20-104(10)(b) or (10)(c) that is more than 30 miles  
16 in length, construction must be completed within 10 years.
- 17 (ii) For a facility as defined in ~~(b) of 75-20-104(10)(b)~~ (b) of 75-20-104(10)(b) that is 30 miles or less in length, construction  
18 must be completed within 5 years.
- 19 (iii) For a facility as defined in ~~(a) of 75-20-104(10)(a)~~ (a) of 75-20-104(10)(a), construction must begin within 6 years and  
20 continue with due diligence in accordance with preliminary construction plans established in the certificate.
- 21 (b) Unless extended or renewed ~~in accordance with subsection (4)(c) or 75-20-225 through~~  
22 ~~75-20-227~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility  
23 is not commenced within the time limits provided in this section.
- 24 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the  
25 board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and  
26 (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort  
27 includes the process of acquiring any necessary state or federal permit or certificate for the facility and the  
28 process of judicial review of any ~~such~~ permit or certificate.
- 29 ~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued~~  
30 ~~or for which construction is yet to be commenced."~~

1           ~~Section 22.~~ Section 75-20-304, MCA, is amended to read:

2           ~~"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance~~  
3 ~~with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant~~  
4 ~~makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for~~  
5 ~~a facility exists and that the applicant did not have knowledge that the need for the facility existed~~  
6 ~~sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501,~~  
7 ~~and this part.~~

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

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

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

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

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

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

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

29           ~~(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or~~  
30 ~~minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of~~



1 ~~75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility~~  
 2 ~~defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not~~  
 3 ~~subject to a permit issued by the department of health or board of health.~~

4 ~~(6) (3) The applicant shall pay all expenses required to process and conduct a hearing on a waiver~~  
 5 ~~request under subsection (3). However, any payments made under this subsection shall must be credited~~  
 6 ~~toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the~~  
 7 ~~decision of the board under subsection (3) this section can be used in making a certification decision under~~  
 8 ~~this chapter.~~

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

11  
 12 ~~**Section 23.** Section 75-20-402, MCA, is amended to read:~~

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

20  
 21 ~~**Section 24.** Section 75-20-403, MCA, is amended to read:~~

22 ~~"**75-20-403. Revocation or suspension of certificate.** Following notice and an opportunity for a~~  
 23 ~~hearing, a certificate may be revoked or suspended by the board:~~

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

26 ~~(2) for failure to maintain safety standards or to comply with the terms or conditions of the~~  
 27 ~~certificate; or~~

28 ~~(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board~~  
 29 ~~or department."~~

1           **Section 25.** ~~Section 75-20-406, MCA, is amended to read:~~

2           ~~"75-20-406. Judicial review of board Board, board of health, and department of health decisions.~~

3           ~~(1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application~~  
4           ~~for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court~~  
5           ~~of competent jurisdiction.~~

6           ~~(2) The judicial review procedure shall be the same as that for contested cases under the Montana~~  
7           ~~Administrative Procedure Act.~~

8           ~~(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3)~~  
9           ~~and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant~~  
10           ~~to the laws administered by the department of health and the board of health and this chapter, the decision~~  
11           ~~may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and~~  
12           ~~(2). If a permit or certification is denied by the department of health or the board of health, the applicant~~  
13           ~~may:~~

14           ~~(a) appeal the denial under the appellate review procedures provided in the laws administered by~~  
15           ~~the department of health and the board of health; or~~

16           ~~(b) reserve the right to appeal the denial by the department of health or the board of health until~~  
17           ~~after the board has issued a final decision.~~

18           ~~(4) (2) Nothing in this This section may not be construed to prohibit the board from holding a~~  
19           ~~hearing as herein provided in this section on all matters that are not the subject of a pending appeal by the~~  
20           ~~applicant under subsection (3)(a) (1)(a)."~~

21  
22           **Section 26.** ~~Section 75-20-407, MCA, is amended to read:~~

23           ~~"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401,~~  
24           ~~75-20-406, and 75-20-408, no a court of this state has does not have jurisdiction to hear or determine any~~  
25           ~~issue, case, or controversy concerning any matter which that was or could have been determined in a~~  
26           ~~proceeding before the board under this chapter or to stop or delay the construction, operation, or~~  
27           ~~maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate~~  
28           ~~issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408."~~

29  
30           **Section 27.** ~~Section 75-20-408, MCA, is amended to read:~~

1           ~~"75-20-408. Penalties for violation of chapter—civil action by attorney general. (1) (a) Whoever~~  
 2 ~~A person who commences to construct or operate a facility without first obtaining a certificate required~~  
 3 ~~under 75-20-201 or a waiver thereof under 75-20-304(2) or without having first having obtained a~~  
 4 ~~certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or~~  
 5 ~~violates any other provision of this chapter or any rule or order adopted thereunder under this chapter or~~  
 6 ~~knowingly submits false information in any report, 10-year plan, or application required by this chapter or~~  
 7 ~~rule or order adopted thereunder under this chapter or causes any of the aforementioned acts to occur is~~  
 8 ~~liable for a civil penalty of not more than \$10,000 for each violation.~~

9           ~~(b) Each day of a continuing violation constitutes a separate offense.~~

10          ~~(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state~~  
 11 ~~in the district court of the first judicial district of Montana.~~

12          ~~(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000~~  
 13 ~~for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation~~  
 14 ~~constitutes a separate offense.~~

15          ~~(3) (2) In addition to any penalty provided in subsection (1) or (2), whenever the department~~  
 16 ~~determines that a person is violating or is about to violate any of the provisions of this section, it may refer~~  
 17 ~~the matter to the attorney general who may bring a civil action on behalf of the state in the district court~~  
 18 ~~of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to~~  
 19 ~~enforce this chapter or a certificate issued hereunder under this chapter. Upon a proper showing, a~~  
 20 ~~permanent or preliminary injunction or temporary restraining order shall be granted without bond.~~

21          ~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the~~  
 22 ~~enforcement through its own legal counsel.~~

23          ~~(5) (3) All fines and penalties collected shall must be deposited in the state special revenue fund~~  
 24 ~~for the use of the department in administering this chapter."~~

26          ~~Section 28. Section 85-15-107, MCA, is amended to read:~~

27          ~~"85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through~~  
 28 ~~85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:~~

29          ~~(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is~~  
 30 ~~subject to the permit;~~

- 1           ~~(b) federal dams and reservoirs;~~
- 2           ~~(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory~~  
3 ~~commission; or~~
- 4           ~~(d) dams that are required to obtain a certificate of environmental compatibility and public need~~  
5 ~~pursuant to 75-20-201 for the period during which the dam is subject to the certificate.~~
- 6           ~~(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401,~~  
7 ~~85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they~~  
8 ~~are subject to a dam safety review by a federal agency.~~
- 9           ~~(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site~~  
10 ~~as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~  
11 ~~(CERCLA), Public Law 96-510."~~

12

13           NEW SECTION. SECTION 10. REPORTS. THE DEPARTMENT OF NATURAL RESOURCES AND  
14 CONSERVATION SHALL PREPARE AND PRESENT A REPORT TO THE 55TH LEGISLATURE WITH  
15 RECOMMENDATIONS FOR IMPROVING AND MODERNIZING THE MONTANA MAJOR FACILITY SITING  
16 ACT. THE DEPARTMENT SHALL CONVENE A STATE DIALOGUE TO DEVELOP THE REPORT AND  
17 RECOMMENDATIONS. THE PARTICIPANTS IN THE DIALOGUE SHALL REPRESENT A BROAD SPECTRUM  
18 OF INTERESTS AFFECTED BY THE SITING, CONSTRUCTION, AND OPERATION OF MAJOR FACILITIES,  
19 INCLUDING UTILITIES, ENERGY DEVELOPMENT GROUPS, INTERESTED INDUSTRIES, RATEPAYERS,  
20 REGULATORS, LANDOWNERS, AND CITIZEN GROUPS. THE DIALOGUE IS TO BE DESIGNED TO SEEK  
21 THE INVOLVEMENT OF A BROAD RANGE OF AFFECTED INTEREST GROUPS IN THE DISCUSSIONS OF  
22 REFORMING THE MONTANA MAJOR FACILITY SITING ACT, WITH THE EXPRESS INTENT OF ELICITING  
23 A CONSENSUS. THE CONSENSUS DEVELOPING PROCESS MUST USE A FACILITATOR WHO IS NOT AN  
24 EMPLOYEE OF THE DEPARTMENT.

25

26           NEW SECTION. SECTION 11. TERMINATION. THE AMENDMENT TO 75-20-104(10)(A)(I)  
27 CONTAINED IN [SECTION 1] THAT INCREASES THE MEGAWATTS OF ELECTRICITY PRODUCED FROM  
28 "50" TO "150" TERMINATES ON JUNE 30, 1997.

29

30           NEW SECTION. SECTION 12. APPLICABILITY. (1) A PERSON WHO, BETWEEN [THE EFFECTIVE

1 DATE OF THIS ACT] AND JUNE 30, 1997, HAS SUBMITTED A CORRECT AND COMPLETE APPLICATION  
2 FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE DEPARTMENT OF HEALTH AND  
3 ENVIRONMENTAL SCIENCES OR HAS COMMENCED TO CONSTRUCT OR COMMENCED OR APPLIED TO  
4 UPGRADE A POWER PLANT THAT HAS BEEN DESIGNED FOR OR WILL BE CAPABLE OF GENERATING  
5 LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75, CHAPTER 20.

6 (2) A PERSON WHO, BETWEEN [THE EFFECTIVE DATE OF THIS ACT] AND JUNE 30, 1997, HAS  
7 FILED AN APPLICATION FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE  
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR A POWER PLANT CAPABLE OF  
9 GENERATING LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75,  
10 CHAPTER 20, IF THE APPLICATION IS CORRECT AND COMPLETE AS OF OCTOBER 1, 1997.

11  
12 NEW SECTION. Section 13. Repealer. Sections ~~75-20-103, 75-20-302, 75-20-404, 75-20-409,~~  
13 ~~75-20-501,~~ SECTION 75-20-502, and ~~75-20-503,~~ MCA, are IS repealed.

14  
15 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

16 -END-

## 1 SENATE BILL NO. 366

2 INTRODUCED BY COLE, HARGROVE, REHBEIN, FELAND, GAGE, STOVALL, KEATING

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY  
5 SITING ACT; AMENDING SECTIONS ~~75-20-102~~, 75-20-104, ~~75-20-201~~, 75-20-202, 75-20-203,  
6 ~~75-20-205~~, ~~75-20-211~~, 75-20-212, ~~75-20-213~~, ~~75-20-215~~, ~~75-20-216~~, 75-20-217, ~~75-20-219~~,  
7 75-20-220, 75-20-221, ~~75-20-222~~, ~~75-20-225~~, ~~75-20-226~~, ~~75-20-227~~, 75-20-301, AND 75-20-303,  
8 ~~75-20-304~~, ~~75-20-402~~, ~~75-20-403~~, ~~75-20-406~~, ~~75-20-407~~, ~~75-20-408~~, AND ~~85-15-107~~, MCA;  
9 REPEALING SECTIONS ~~75-20-103~~, ~~75-20-302~~, ~~75-20-404~~, ~~75-20-409~~, ~~75-20-501~~, SECTION 75-20-502,  
10 AND ~~75-20-503~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
11 PROVISION."

12

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.

## SENATE BILL NO. 366

INTRODUCED BY COLE, HARGROVE, REHBEIN, FELAND, GAGE, STOVALL, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS ~~75-20-102~~, 75-20-104, ~~75-20-201~~, 75-20-202, 75-20-203, ~~75-20-205~~, ~~75-20-211~~, 75-20-212, ~~75-20-213~~, ~~75-20-215~~, ~~75-20-216~~, 75-20-217, ~~75-20-219~~, 75-20-220, 75-20-221, ~~75-20-222~~, ~~75-20-225~~, ~~75-20-226~~, ~~75-20-227~~, 75-20-301, AND 75-20-303, ~~75-20-304~~, ~~75-20-402~~, ~~75-20-403~~, ~~75-20-406~~, ~~75-20-407~~, ~~75-20-408~~, AND ~~85-15-107~~, MCA; REPEALING SECTIONS ~~75-20-103~~, ~~75-20-302~~, ~~75-20-404~~, ~~75-20-409~~, ~~75-20-501~~, SECTION 75-20-502, AND ~~75-20-503~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND, AN APPLICABILITY PROVISION, AND A TERMINATION PROVISION."

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

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

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

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

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

1 definitions apply:

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

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

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

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

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

14 (6) "Certificate" means the certificate of environmental compatibility ~~and public need~~ AND PUBLIC  
15 NEED issued by the board under this chapter that is required for the construction or operation of a facility.

16 (7) "Commence to construct" means:

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

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

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

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

30 (8) "Department" means the department of natural resources and conservation provided for in Title



1 2, chapter 15, part 33.

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

4 (10) "Facility" means:

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

8 (i) generating ~~50~~ 150 megawatts of electricity or more or any addition thereto, ~~(except pollution~~  
9 ~~control facilities approved by the department of health and environmental sciences and~~ added to an existing  
10 plant) ~~having an estimated cost in excess of \$10 million;~~

11 (ii) producing ~~25~~ 250 25 million cubic feet or more of gas derived from coal per day ~~or any addition~~  
12 ~~thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO, EXCEPT  
13 POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN  
14 EXISTING PLANT;

15 (iii) producing ~~25,000~~ 100,000 25,000 barrels of liquid hydrocarbon products per day or more ~~or~~  
16 ~~any addition thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO,  
17 EXCEPT POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED  
18 TO AN EXISTING PLANT; or

19 (iv) enriching uranium minerals ~~or any addition thereto having an estimated cost in excess of \$10~~  
20 ~~million; or~~ OR ANY ADDITION THERETO;

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

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

25 (i) does not include an electric transmission line and associated facilities of a design capacity of  
26 230 kilovolts or less and 10 miles or less in length; and

27 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts  
28 and up to and including 115 kilovolts for which the person planning to construct the line has obtained  
29 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively  
30 own more than 75% of the property along the centerline;

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

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

7 ~~(e) any underground in-situ gasification of coal~~ OR ANY ADDITION THERETO, EXCEPT POLLUTION  
8 CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN EXISTING  
9 PLANT;

10 (E) ANY UNDERGROUND IN SITU GASIFICATION OF COAL.

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

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

16 (13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,  
17 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."  
18

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

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

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

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

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

1 ~~the laws of this state.~~

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

4

5 **Section 2.** Section 75-20-202, MCA, is amended to read:

6 **"75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under  
 7 diligent onsite physical construction or in operation on January 1, 1973.

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

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

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

13 (ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of  
 14 which will result in greater efficiency, promote energy conservation, and promote greater system reliability  
 15 than the existing facility.

16 ~~(3) The board shall waive compliance with the requirements of this chapter if the applicant makes~~  
 17 ~~a clear and convincing showing to the board at a public hearing that:~~

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

21 ~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be~~  
 22 ~~located support a waiver by resolution;~~

23 ~~(c) the proposed facility will be constructed within a 15 mile radius of the operations that have~~  
 24 ~~ceased or been curtailed; or~~

25 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the~~  
 26 ~~facility is proposed to be located.~~

27 ~~(3)(4)(3)~~ A person proposing to construct an exempt facility shall pay to the department reasonable  
 28 costs, if any, incurred by the department in processing the exemption.

29 ~~(4) This chapter does not apply to a facility defined in 75-20-104(10)(e) that has been designated~~  
 30 ~~by the governor for environmental review by an executive agency of the state for the purpose of complying~~

1 ~~with Title 75, chapter 1, pursuant to Executive Order 4 81 and prior to July 1, 1985."~~

2

3 **Section 3.** Section 75-20-203, MCA, is amended to read:

4 "75-20-203. **Certificate transferable.** A certificate may be transferred, ~~subject to the approval of~~  
5 ~~the board,~~ to a person who agrees to comply with the terms, conditions, and modifications contained  
6 ~~therein in the certificate."~~

7

8 ~~**Section 6.** Section 75-20-205, MCA, is amended to read:~~

9 ~~"75-20-205. **Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and~~  
10 ~~associated facilities certified under this chapter, the board shall condition the certificate upon board~~  
11 ~~approval of a final centerline location.~~

12 ~~(2) The final centerline location must be determined in a noncontested case proceeding before the~~  
13 ~~board after the submission of a centerline location report by the department. Within 60 days after the~~  
14 ~~commencement of a noncontested case proceeding, the board shall render and record a decision approving~~  
15 ~~a centerline location.~~

16 ~~(3) The department shall consult with the certificate holder and the affected landowners prior to~~  
17 ~~making its report.~~

18 ~~(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and~~  
19 ~~75-20-503 and the findings of fact and conclusions of law set out in the board decision.~~

20 ~~(5) The department report may be completed on segments of a certified facility as is convenient~~  
21 ~~to the certificate holder.~~

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

26

27 ~~**Section 7.** Section 75-20-211, MCA, is amended to read:~~

28 ~~"75-20-211. **Application filing and contents proof of service and notice.** (1) (a) An applicant~~  
29 ~~shall file with the department and department of health a joint application for a certificate under this chapter~~  
30 ~~and for the permits required under the laws administered by the department of health and the board of~~

- 1 health in such ~~the~~ form as the board requires under applicable rules, containing the following information:
- 2       (ii) ~~a description of the proposed location and of the facility to be built thereon;~~
- 3       (iii) ~~a summary of any studies which that have been made of the environmental impact of the~~
- 4 facility;
- 5       (iiii) ~~a statement explaining the need for the facility;~~
- 6       (iv) ~~for facilities defined in 75-20-104(10)(b) and (10)(c), a description of reasonable alternate~~
- 7 locations for the facility, a general description of the comparative merits and detriments of each location
- 8 submitted, and a statement of the reasons why the proposed location is best suited for the facility;
- 9       (v) ~~(iv) (A) for facilities as defined in 75-20-104(10)(b) and (10)(c), baseline data for the primary~~
- 10 and reasonable alternate locations; or
- 11       (B) ~~for facilities as defined in 75-20-104(10)(a), and (10)(d), and (10)(e), baseline data for the~~
- 12 proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for
- 13 siting the facility;
- 14       (vi) ~~(v) at the applicant's option, an environmental study plan to satisfy the requirements of this~~
- 15 chapter; and
- 16       (viii) ~~(vi) such other information as the applicant considers relevant or as the board and board of~~
- 17 health by order or rule or the department and department of health by order or rule may require.
- 18       (b) ~~A copy or copies of the studies referred to in subsection (1)(a)(iii) above shall must be filed with~~
- 19 the department, if ordered, and shall must be available for public inspection.
- 20       (2) ~~An application may consist of an application for two or more facilities in combination which are~~
- 21 physically and directly attached to each other and are operationally a single operating entity.
- 22       (3) ~~An application shall be accompanied by proof of service of a copy of the application on the~~
- 23 chief executive officer of each unit of local government, county commissioner, city or county planning
- 24 boards, and federal agencies charged with the duty of protecting the environment or of planning land use
- 25 in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be
- 26 located and on the following state government agencies:
- 27       (a) ~~environmental quality council;~~
- 28       (b) ~~department of public service regulation;~~
- 29       (c) ~~department of fish, wildlife, and parks;~~
- 30       (d) ~~department of state lands;~~

1 ~~(e) department of commerce;~~

2 ~~(f) department of transportation.~~

3 ~~(4) (3) The copy of the application shall must be accompanied by a notice specifying the date on~~  
4 ~~or about which the application is to be filed.~~

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

9  
10 **Section 4.** Section 75-20-212, MCA, is amended to read:

11 "75-20-212. **Cure for failure of service.** Inadvertent failure of service on or notice to any of the  
12 municipalities, government agencies, or persons identified in ~~75-20-211(3)~~ and ~~(5)~~ 75-20-211 may be cured  
13 pursuant to orders of the department designed to afford them adequate notice to enable their effective  
14 participation in the proceeding."

15  
16 ~~**Section 9.** Section 75-20-213, MCA, is amended to read:~~

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

21 ~~(2) An application may be amended by an applicant any time prior to the department's~~  
22 ~~recommendation. If the proposed amendment is such that it prevents the department, or the department~~  
23 ~~of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under~~  
24 ~~this chapter, the department may require such additional filing fees as the department determines justifies~~  
25 ~~to the applicant as necessary, or the department may require a new application and filing fee.~~

26 ~~(3) The applicant shall submit supplemental material in a timely manner as requested by the~~  
27 ~~department or as offered by the applicant to explain, support, or provide the detail with respect to an item~~  
28 ~~described in the original application, without filing an application for an amendment. The department's~~  
29 ~~determination as to whether information is supplemental or whether an application for amendment is~~  
30 ~~required shall be conclusive."~~

1           ~~Section 10. Section 75-20-215, MCA, is amended to read:~~

2           ~~"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall must be deposited~~  
 3 ~~in the state special revenue fund for the use of the department in administering this chapter. The applicant~~  
 4 ~~shall pay to the department a filing fee as provided in this section based upon the department's estimated~~  
 5 ~~costs of processing the application under this chapter, but which shall. The filing fee may not exceed the~~  
 6 ~~following scale based upon the estimated cost of the facility:~~

7           ~~(i) 4% of any estimated cost up to \$1 million; plus~~

8           ~~(ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus~~

9           ~~(iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus~~

10          ~~(iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus~~

11          ~~(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus~~

12          ~~(vi) 0.05% of any amount of estimated cost over \$1 billion.~~

13          ~~(b) The department may allow in its discretion shall grant a credit against the fee payable under~~  
 14 ~~this section for the development of information or providing of services required hereunder under this~~  
 15 ~~chapter or required for preparation of an environmental impact statement under the Montana or national~~  
 16 ~~environmental policy acts. The applicant may submit the information to the department together with an~~  
 17 ~~accounting of the expenses incurred in preparing the information. The department shall evaluate the~~  
 18 ~~applicability, validity, and usefulness of the data and determine the amount which may be credited against~~  
 19 ~~the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time~~  
 20 ~~be reduced if the department determines documents to the applicant that it is necessary to carry out its~~  
 21 ~~responsibilities under this chapter.~~

22          ~~(2) (a) The department may contract with an applicant for the development of information,~~  
 23 ~~provision of services and payment of fees required under this chapter. The contract may continue an~~  
 24 ~~agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract~~  
 25 ~~shall must be credited against the fee payable hereunder under this section. Notwithstanding the provisions~~  
 26 ~~of this section, the revenue derived from the filing fee must be sufficient to enable the department, the~~  
 27 ~~department of health, the board, and the board of health, and the agencies listed in 75-20-216(5) to carry~~  
 28 ~~out their responsibilities under this chapter. The department may amend a contract to require additional~~  
 29 ~~payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice~~  
 30 ~~to the applicant. The department and applicant may enter into a contract which exceeds the scale provided~~

1 ~~in subsection (1)(a).~~

2 ~~(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in~~  
 3 ~~accordance with a schedule of installments developed by the department, provided that no one installment~~  
 4 ~~may exceed 20% of the total filing fee provided for in subsection (1).~~

5 ~~(3) The estimated cost of upgrading an existing transmission substation may not be included in the~~  
 6 ~~estimated cost of a proposed facility for the purpose of calculating a filing fee.~~

7 ~~(4) If an application consists of a combination of two or more facilities, the filing fee shall must be~~  
 8 ~~based on the total estimated cost of the combined facilities.~~

9 ~~(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest~~  
 10 ~~at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out~~  
 11 ~~its responsibilities under this chapter. A refund shall must be made after all administrative and judicial~~  
 12 ~~remedies have been exhausted by all parties to the certification proceedings.~~

13 ~~(6) The revenues derived from filing fees shall must be used by the department in compiling the~~  
 14 ~~information required for rendering a decision on a certificate and for carrying out its and the board's other~~  
 15 ~~responsibilities under this chapter."~~

16

17 ~~Section 11. Section 75-20-216, MCA, is amended to read:~~

18 ~~"75-20-216. Study, evaluation, and report on proposed facility—assistance by other agencies. (1)~~

19 ~~After receipt of an application, the department and department of health shall within 90 days notify the~~  
 20 ~~applicant in writing that:~~

21 ~~(a) the application is in compliance and is accepted as complete; or~~

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

26 ~~(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and~~  
 27 ~~this section, the department shall commence an intensive study and evaluation of the proposed facility and~~  
 28 ~~its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of~~  
 29 ~~health shall commence a study to enable it or the board of health to issue a decision, opinion, order,~~  
 30 ~~certification, or permit as provided in subsection (3). The department and department of health shall use,~~



1 ~~to the extent they consider applicable, valid and useful existing studies and reports submitted by the~~  
2 ~~applicant or compiled by a state or federal agency.~~

3 ~~(3) The department of health shall within 1 year 6 months following the date of acceptance of an~~  
4 ~~application and the board of health or department of health shall, if applicable, within an additional 6 3~~  
5 ~~months, issue any decision, opinion, order, certification, or permit required under the laws administered by~~  
6 ~~the department of health or the board of health and this chapter. The department of health and the board~~  
7 ~~of health shall determine compliance with all standards, permit requirements, and implementation plans~~  
8 ~~under their jurisdiction for the proposed location or any proposed alternate location in their decision,~~  
9 ~~opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without~~  
10 ~~conditions, is conclusive on all matters that the department of health and board of health administer, and~~  
11 ~~any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the~~  
12 ~~determinations made under the laws administered by the department of health and the board of health.~~  
13 ~~Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive,~~  
14 ~~the board retains authority to make the determination required under 75-20-301(2)(c). The decision,~~  
15 ~~opinion, order, certification, or permit of the department of health or the board of health satisfies the review~~  
16 ~~requirements by those agencies and shall be is acceptable in lieu of an environmental impact statement~~  
17 ~~under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit~~  
18 ~~shall be served upon the department and the board and shall be utilized as part of their final site selection~~  
19 ~~process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules~~  
20 ~~adopted by the board of health, the department of health shall provide an opportunity for public review and~~  
21 ~~comment.~~

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

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

7

8           **Section 5.** Section 75-20-217, MCA, is amended to read:

9           **"75-20-217. Voiding an application.** An application may be voided by the department following  
 10 notice and an opportunity for hearing for:

11           (1) any material and knowingly false statement in the application or in accompanying statements  
 12 or studies required of the applicant;

13           (2) failure to file an application in substantially the form and content required by this chapter and  
 14 the rules adopted ~~thereunder~~ under this chapter; or

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

16

17           ~~**Section 13.** Section 75-20-219, MCA, is amended to read:~~

18           ~~**"75-20-219. Amendments to a certificate.** (1) Within 30 days after notice of an amendment to a~~  
 19 ~~certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original~~  
 20 ~~proceeding, the department shall determine whether the proposed change in the facility would result in a~~  
 21 ~~material increase in any environmental impact of the facility or a substantial change in the location of all~~  
 22 ~~or a portion of the facility as set forth in the certificate. If the department determines that the proposed~~  
 23 ~~change would result in a material increase in any environmental impact of the facility or a substantial~~  
 24 ~~change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner~~  
 25 ~~as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify~~  
 26 ~~the amendment with such conditions as it deems that are documented as appropriate.~~

27           ~~(2) In those cases where in which the department determines that the proposed change in the~~  
 28 ~~facility would not result in a material increase in any environmental impact or would not be a substantial~~  
 29 ~~change in the location of all or a portion of the facility, the board shall automatically grant the amendment~~  
 30 ~~either as applied for or upon such terms or conditions as that the board considers appropriate unless the~~

1 ~~department's determination is appealed to the board within 15 days after notice of the department's~~  
 2 ~~determination is given.~~

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

7 ~~(4) If the department determines that the proposed change in the facility would not result in a~~  
 8 ~~material increase in any environmental impact or would not be a substantial change in the location of all~~  
 9 ~~or a portion of the facility and a hearing is required because the department's determination is appealed to~~  
 10 ~~the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing~~  
 11 ~~evidence that the proposed change in the facility would result in a material increase in any environmental~~  
 12 ~~impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in~~  
 13 ~~the certificate.~~

14 ~~(5) If an amendment is required to a certificate which is required that would affect, amend, alter~~  
 15 ~~or modify a decision, opinion, order, certification, or permit issued by the department of health or board of~~  
 16 ~~health, such the amendment must be processed under the applicable statutes administered by the~~  
 17 ~~department of health or board of health."~~

18

19 **Section 6.** Section 75-20-220, MCA, is amended to read:

20 **"75-20-220. Hearing examiner -- restrictions -- duties.** (1) If the board appoints a hearing examiner  
 21 to conduct any certification proceedings under this chapter, the hearing examiner may not be a member  
 22 of the board, an employee of the department, or a member or employee of the department of health or  
 23 board of health. A hearing examiner, if any, ~~shall~~ must be appointed by the board within 20 days after the  
 24 department's report has been filed with the board. If a hearing is held before the board of health or the  
 25 department of health, the board and the board of health or the department of health shall mutually agree  
 26 on the appointment of a hearing examiner to preside at both hearings.

27 (2) A prehearing conference ~~shall~~ must be held following notice within ~~60~~ 30 45 days after the  
 28 department's report has been filed with the board.

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

30 (4) The prehearing conference ~~shall~~ must be directed toward a determination of the issues

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

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

9 (6) The hearing examiner shall allow discovery, which ~~shall~~ must be completed before the  
10 commencement of the hearing, upon good cause shown and under ~~such~~ other conditions as the hearing  
11 examiner shall prescribe.

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

15 (8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law,  
16 identifying the witnesses of the active parties, naming the public witnesses and other interested parties who  
17 have submitted written testimony in lieu of appearance, outlining the order in which the hearing ~~shall~~ must  
18 proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised  
19 ~~which that~~ are to be conclusively presumed and are not subject to further proof except for good cause  
20 shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the  
21 approval of the board.

22 (9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and  
23 shall, within ~~60~~ 30 ~~45~~ days of that date, prepare and submit to the board and in the case of a conjunctive  
24 hearing, within ~~90~~ 45 ~~60~~ days to the board and the board of health or department of health proposed  
25 findings of fact, conclusions of law, and a recommended decision.

26 (10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall  
27 insure that the time of the proceeding, from the date the department's report is filed with the board until  
28 the recommended report and order of the examiner is filed with the board, does not exceed ~~9~~ 3 ~~8~~ calendar  
29 months unless extended by the board for good cause.

30 (11) The board or hearing examiner may waive all or a portion of the procedures set forth in

1 subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has  
2 recommended approval of a facility and no objections have been filed."

3  
4 **Section 7.** Section 75-20-221, MCA, is amended to read:

5 **"75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1)

6 The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion,  
7 order, certification, or permit by the board of health under this chapter may include as active parties:

8 (a) the applicant;

9 (b) each ~~political entity~~, unit of local government, and government agency, including the  
10 department of health, entitled to receive service of a copy of the application under 75-20-211(3); and

11 ~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~

12 ~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty;~~  
13 ~~to protect the environment, personal health, or other biological values; to preserve historical sites; to~~  
14 ~~promote consumer interests; to represent commercial and industrial groups; or to promote the orderly~~  
15 ~~development of the areas in which the facility is to be located;~~

16 (C) ANY PERSON ENTITLED TO RECEIVE SERVICE OF A COPY OF THE APPLICATION UNDER  
17 75-20-211(5);

18 (D) ANY NONPROFIT ORGANIZATION FORMED IN WHOLE OR IN PART TO PROMOTE  
19 CONSERVATION OR NATURAL BEAUTY; TO PROTECT THE ENVIRONMENT, PERSONAL HEALTH, OR  
20 OTHER BIOLOGICAL VALUES; TO PRESERVE HISTORICAL SITES; TO PROMOTE CONSUMER INTERESTS;  
21 TO REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS; OR TO PROMOTE THE ORDERLY  
22 DEVELOPMENT OF THE AREAS IN WHICH THE FACILITY IS TO BE LOCATED;

23 ~~(e)(E)~~ any other interested person who establishes an interest in the proceeding.

24 (2) The department ~~shall be~~ is an active party in any certification proceeding in which the  
25 department recommends denial of all or a portion of a facility.

26 ~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen~~  
27 ~~and any party referred to in (b), (c), (d), or (e) of subsection (1).~~

28 (3) THE PARTIES TO A CERTIFICATION PROCEEDING MAY ALSO INCLUDE, AS PUBLIC PARTIES,  
29 ANY MONTANA CITIZEN AND ANY PARTY REFERRED TO IN SUBSECTIONS (1)(B) THROUGH (1)(E).

30 ~~(4)(3)(4)~~ Any party waives the right to be a party if the party does not participate in the hearing

1 before the board or the board of health.

2 ~~(5)(4)(5)~~ Each unit of local government entitled to receive service of a copy of the application ~~under~~  
 3 ~~75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends  
 4 to participate in the certification proceeding. ~~If the unit of local government does not intend to participate,~~  
 5 ~~it shall list in this statement its reasons for failing to do so. This statement of intent shall be published~~  
 6 ~~before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable~~  
 7 ~~unit of local government."~~

8

9 ~~Section 16. Section 75-20-222, MCA, is amended to read:~~

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

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

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

18 ~~(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the~~  
 19 ~~procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of~~  
 20 ~~evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties~~  
 21 ~~to the hearing. No other rules of procedure or evidence shall apply except that the contested case~~  
 22 ~~procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures~~  
 23 ~~set forth in this chapter or the procedural rules adopted by the board."~~

24

25 ~~Section 17. Section 75-20-225, MCA, is amended to read:~~

26 ~~"75-20-225. Certificate renewal application contents filing fee. (1) Any certificate holder for~~  
 27 ~~a facility as defined in 75-20-104(10)(c)(i) may apply for renewal of a certificate prior to the certificate~~  
 28 ~~lapsing.~~

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

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

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

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

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

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

13  
 14           ~~**Section 18.** Section 75-20-226, MCA, is amended to read:~~

15           ~~"75-20-226. Renewal study. (1) Upon receipt of a completed application for renewal of a~~  
 16 ~~certificate, the department shall evaluate the updated information and any significant changes in need,~~  
 17 ~~alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken~~  
 18 ~~place since the original study performed in granting the certificate, considering the applicable criteria listed~~  
 19 ~~in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.~~

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

24           ~~(3) Within 12 months following acceptance of a complete application for renewal of a certificate,~~  
 25 ~~the department shall make a report to the board. This report must contain the department's studies,~~  
 26 ~~evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and~~  
 27 ~~an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act.~~  
 28 ~~The department's report must be directed to the question of whether the original board findings and~~  
 29 ~~conditions have been or need to be altered as a result of any significant changes in need, alternatives,~~  
 30 ~~technology, baseline environment, or environmental impact since issuance of the certificate, considering~~

1 ~~the applicable criteria listed in 75-20-301 and 75-20-503.~~

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

8  
 9 ~~Section 19. Section 75-20-227, MCA, is amended to read:~~

10 ~~"75-20-227. Certificate renewal hearing decision. (1) The board shall follow the provisions of~~  
 11 ~~75-20-218 through 75-20-222 in making decisions on certificate renewals.~~

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

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

19  
 20 ~~Section 8. Section 75-20-301, MCA, is amended to read:~~

21 ~~"75-20-301. Decision of board -- findings necessary for certification. (1) Within 60 days after~~  
 22 ~~submission of the recommended decision by the hearing examiner, the board shall make complete findings,~~  
 23 ~~issue an opinion, and render a decision upon the record, either granting or denying the application as filed~~  
 24 ~~or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance~~  
 25 ~~of the facility as the board considers appropriate.~~

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

28 ~~(a) the basis of the need for the facility; THE BASIS OF THE NEED FOR THE FACILITY;~~

29 ~~(b) (B) the nature of the probable environmental impact;~~

30 ~~(c) that the facility minimizes adverse environmental impact, considering the state of available~~



1 ~~technology and the nature and economics of the various alternatives;~~

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

3 (C) THAT THE FACILITY MINIMIZES ADVERSE ENVIRONMENTAL IMPACT, CONSIDERING THE  
 4 STATE OF AVAILABLE TECHNOLOGY AND THE NATURE AND ECONOMICS OF THE VARIOUS  
 5 ALTERNATIVES;

6 (D) EACH OF THE CRITERIA LISTED IN 75-20-503;

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

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

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

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

12 ~~(f)(e)(F)~~ that the location of the facility as proposed conforms to applicable state ~~and local~~ AND  
 13 LOCAL laws and regulations ~~issued thereunder, except that the board may refuse to apply any local law~~  
 14 ~~or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably~~  
 15 ~~restrictive in view of the existing technology, of factors of cost or economics, or of the needs of~~  
 16 ~~consumers, whether located inside or outside of the directly affected government subdivisions , EXCEPT~~  
 17 THAT THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF IT FINDS THAT, AS  
 18 APPLIED TO THE PROPOSED FACILITY, THE LAW OR REGULATION IS UNREASONABLY RESTRICTIVE IN  
 19 VIEW OF THE EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF THE NEEDS OF  
 20 CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF THE DIRECTLY AFFECTED GOVERNMENT  
 21 SUBDIVISIONS; and

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

23 (G) THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

24 ~~(h)(d)(H)~~ that the department of health or board of health ~~have~~ has issued a decision, opinion,  
 25 order, certification, or permit as required by 75-20-216(3); ~~and~~

26 (i) ~~that the use of public lands for location of the facility was evaluated and public lands were~~  
 27 ~~selected whenever their use is as economically practicable as the use of private lands and compatible with~~  
 28 ~~the environmental criteria listed in 75-20-503.~~

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

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

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

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

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

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

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

8 (1) THAT THE USE OF PUBLIC LANDS FOR LOCATION OF THE FACILITY WAS EVALUATED AND  
9 PUBLIC LANDS WERE SELECTED WHENEVER THEIR USE IS AS ECONOMICALLY PRACTICABLE AS THE  
10 USE OF PRIVATE LANDS AND COMPATIBLE WITH THE ENVIRONMENTAL CRITERIA LISTED IN  
11 75-20-503.

12 (3) IN DETERMINING THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE,  
13 AND NECESSITY UNDER SUBSECTION (2)(G), THE BOARD SHALL CONSIDER:

14 (A) THE ITEMS LISTED IN SUBSECTIONS (2)(A) AND (2)(B);

15 (B) THE BENEFITS TO THE APPLICANT AND THE STATE RESULTING FROM THE PROPOSED  
16 FACILITY;

17 (C) THE EFFECTS OF THE ECONOMIC ACTIVITY RESULTING FROM THE PROPOSED FACILITY;

18 (D) THE EFFECTS OF THE PROPOSED FACILITY ON THE PUBLIC HEALTH, WELFARE, AND  
19 SAFETY;

20 (E) ANY OTHER FACTORS THAT IT CONSIDERS RELEVANT.

21 (4) CONSIDERATIONS OF NEED, PUBLIC NEED, OR PUBLIC CONVENIENCE AND NECESSITY AND  
22 DEMONSTRATION THEREOF BY THE APPLICANT APPLY ONLY TO UTILITY FACILITIES DESCRIBED IN  
23 75-20-104(10)(A)(I), (10)(B), (10)(C), AND (10)(D)."

24  
25 **Section 9.** Section 75-20-303, MCA, is amended to read:

26 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
27 for a certificate, the board shall issue an opinion stating its reasons for the action taken.

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

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

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

4 (i) the environmental impact of the proposed facility; and

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

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

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

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

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

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

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

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

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

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

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

21 (b) Unless extended or renewed in ~~accordance with subsection (4)(e) or 75-20-225 through~~  
22 ~~75-20-227~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility  
23 is not commenced within the time limits provided in this section.

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

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

1           ~~Section 22. Section 75-20-304, MCA, is amended to read:~~

2           ~~"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance~~  
3 ~~with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant~~  
4 ~~makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for~~  
5 ~~a facility exists and that the applicant did not have knowledge that the need for the facility existed~~  
6 ~~sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501,~~  
7 ~~and this part.~~

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

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

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

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

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

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

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

29           ~~(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or~~  
30 ~~minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of~~

1 ~~75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility~~  
 2 ~~defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not~~  
 3 ~~subject to a permit issued by the department of health or board of health.~~

4 ~~(6) (3) The applicant shall pay all expenses required to process and conduct a hearing on a waiver~~  
 5 ~~request under subsection (3). However, any payments made under this subsection shall must be credited~~  
 6 ~~toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the~~  
 7 ~~decision of the board under subsection (3) this section can be used in making a certification decision under~~  
 8 ~~this chapter.~~

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

11  
 12 ~~**Section 23.** Section 75-20-402, MCA, is amended to read:~~

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

20  
 21 ~~**Section 24.** Section 75-20-403, MCA, is amended to read:~~

22 ~~"75-20-403. **Revocation or suspension of certificate.** Following notice and an opportunity for a~~  
 23 ~~hearing, a certificate may be revoked or suspended by the board:~~

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

26 ~~(2) for failure to maintain safety standards or to comply with the terms or conditions of the~~  
 27 ~~certificate; or~~

28 ~~(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board~~  
 29 ~~or department."~~

1           ~~Section 25. Section 75-20-406, MCA, is amended to read:~~

2           ~~"75-20-406. Judicial review of board Board, board of health, and department of health decisions.~~

3           ~~(1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application~~  
4           ~~for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court~~  
5           ~~of competent jurisdiction.~~

6           ~~(2) The judicial review procedure shall be the same as that for contested cases under the Montana~~  
7           ~~Administrative Procedure Act.~~

8           ~~(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3)~~  
9           ~~and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant~~  
10           ~~to the laws administered by the department of health and the board of health and this chapter, the decision~~  
11           ~~may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and~~  
12           ~~(2). If a permit or certification is denied by the department of health or the board of health, the applicant~~  
13           ~~may:~~

14           ~~(a) appeal the denial under the appellate review procedures provided in the laws administered by~~  
15           ~~the department of health and the board of health; or~~

16           ~~(b) reserve the right to appeal the denial by the department of health or the board of health until~~  
17           ~~after the board has issued a final decision.~~

18           ~~(4) (2) Nothing in this This section may not be construed to prohibit the board from holding a~~  
19           ~~hearing as herein provided in this section on all matters that are not the subject of a pending appeal by the~~  
20           ~~applicant under subsection (3)(a) (1)(a).~~"

21

22           ~~Section 26. Section 75-20-407, MCA, is amended to read:~~

23           ~~"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401,~~  
24           ~~75-20-406, and 75-20-408, no a court of this state has does not have jurisdiction to hear or determine any~~  
25           ~~issue, case, or controversy concerning any matter which that was or could have been determined in a~~  
26           ~~proceeding before the board under this chapter or to stop or delay the construction, operation, or~~  
27           ~~maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate~~  
28           ~~issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408."~~

29

30           ~~Section 27. Section 75-20-408, MCA, is amended to read:~~

1           ~~"75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever~~  
 2 ~~A person who commences to construct or operate a facility without first obtaining a certificate required~~  
 3 ~~under 75-20-201 or a waiver thereof under 75-20-304(2) or without having first having obtained a~~  
 4 ~~certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or~~  
 5 ~~violates any other provision of this chapter or any rule or order adopted thereunder under this chapter or~~  
 6 ~~knowingly submits false information in any report, 10-year plan, or application required by this chapter or~~  
 7 ~~rule or order adopted thereunder under this chapter or causes any of the aforementioned acts to occur is~~  
 8 ~~liable for a civil penalty of not more than \$10,000 for each violation.~~

9           ~~(b) Each day of a continuing violation constitutes a separate offense.~~

10           ~~(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state~~  
 11 ~~in the district court of the first judicial district of Montana.~~

12           ~~(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000~~  
 13 ~~for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation~~  
 14 ~~constitutes a separate offense.~~

15           ~~(3) (2) In addition to any penalty provided in subsection (1) or (2), whenever the department~~  
 16 ~~determines that a person is violating or is about to violate any of the provisions of this section, it may refer~~  
 17 ~~the matter to the attorney general who may bring a civil action on behalf of the state in the district court~~  
 18 ~~of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to~~  
 19 ~~enforce this chapter or a certificate issued hereunder under this chapter. Upon a proper showing, a~~  
 20 ~~permanent or preliminary injunction or temporary restraining order shall be granted without bond.~~

21           ~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the~~  
 22 ~~enforcement through its own legal counsel.~~

23           ~~(5) (3) All fines and penalties collected shall must be deposited in the state special revenue fund~~  
 24 ~~for the use of the department in administering this chapter."~~

25  
 26           ~~Section 28. Section 85-15-107, MCA, is amended to read:~~

27           ~~"85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through~~  
 28 ~~85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:~~

29           ~~(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is~~  
 30 ~~subject to the permit;~~

1 ~~(b) federal dams and reservoirs;~~

2 ~~(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory~~  
3 ~~commission; or~~

4 ~~(d) dams that are required to obtain a certificate of environmental compatibility and public need~~  
5 ~~pursuant to 75-20-201 for the period during which the dam is subject to the certificate.~~

6 ~~(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401,~~  
7 ~~85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they~~  
8 ~~are subject to a dam safety review by a federal agency.~~

9 ~~(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site~~  
10 ~~as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~  
11 ~~(CERCLA), Public Law 96-510."~~

12 .

13 NEW SECTION. SECTION 10. REPORTS. THE DEPARTMENT OF NATURAL RESOURCES AND  
14 CONSERVATION SHALL PREPARE AND PRESENT A REPORT TO THE 55TH LEGISLATURE WITH  
15 RECOMMENDATIONS FOR IMPROVING AND MODERNIZING THE MONTANA MAJOR FACILITY SITING  
16 ACT. THE DEPARTMENT SHALL CONVENE A STATE DIALOGUE TO DEVELOP THE REPORT AND  
17 RECOMMENDATIONS. THE PARTICIPANTS IN THE DIALOGUE SHALL REPRESENT A BROAD SPECTRUM  
18 OF INTERESTS AFFECTED BY THE SITING, CONSTRUCTION, AND OPERATION OF MAJOR FACILITIES,  
19 INCLUDING UTILITIES, ENERGY DEVELOPMENT GROUPS, INTERESTED INDUSTRIES, RATEPAYERS,  
20 REGULATORS, LANDOWNERS, AND CITIZEN GROUPS. THE DIALOGUE IS TO BE DESIGNED TO SEEK  
21 THE INVOLVEMENT OF A BROAD RANGE OF AFFECTED INTEREST GROUPS IN THE DISCUSSIONS OF  
22 REFORMING THE MONTANA MAJOR FACILITY SITING ACT, WITH THE EXPRESS INTENT OF ELICITING  
23 A CONSENSUS. THE CONSENSUS DEVELOPING PROCESS MUST USE A FACILITATOR WHO IS NOT AN  
24 EMPLOYEE OF THE DEPARTMENT.

25

26 NEW SECTION. SECTION 11. TERMINATION. THE AMENDMENT TO 75-20-104(10)(A)(I)  
27 CONTAINED IN [SECTION 1] THAT INCREASES THE MEGAWATTS OF ELECTRICITY PRODUCED FROM  
28 "50" TO "150" TERMINATES ON JUNE 30, 1997.

29

30 NEW SECTION. SECTION 12. APPLICABILITY. (1) A PERSON WHO, BETWEEN [THE EFFECTIVE



1 DATE OF THIS ACT] AND JUNE 30, 1997, HAS SUBMITTED A CORRECT AND COMPLETE APPLICATION  
2 FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE DEPARTMENT OF HEALTH AND  
3 ENVIRONMENTAL SCIENCES OR HAS COMMENCED TO CONSTRUCT OR COMMENCED OR APPLIED TO  
4 UPGRADE A POWER PLANT THAT HAS BEEN DESIGNED FOR OR WILL BE CAPABLE OF GENERATING  
5 LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75, CHAPTER 20.

6 (2) A PERSON WHO, BETWEEN [THE EFFECTIVE DATE OF THIS ACT] AND JUNE 30, 1997, HAS  
7 FILED AN APPLICATION FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE  
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR A POWER PLANT CAPABLE OF  
9 GENERATING LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75,  
10 CHAPTER 20, IF THE APPLICATION IS CORRECT AND COMPLETE AS OF OCTOBER 1, 1997.

11  
12 NEW SECTION. Section 13. Repealer. Sections ~~75-20-103, 75-20-302, 75-20-404, 75-20-408,~~  
13 ~~75-20-501,~~ SECTION 75-20-502, and ~~75-20-503,~~ MCA, are IS repealed.

14  
15 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

16 -END-

GOVERNOR'S AMENDMENTS TO  
SENATE BILL NO. 366  
(REFERENCE COPY)  
April 11, 1995

1. Page 3, line 18.  
Strike: "or"

2. Page 3, line 20.  
Following: "THERETO;"  
Insert; "or"

3. Page 3, line 22.  
Following: "+"  
Insert: "(v) for purposes of 75-20-204 only, generating 50  
megawatts of hydroelectric power or more or any addition  
thereto;"

## SENATE BILL NO. 366

INTRODUCED BY COLE, HARGROVE, REHBEIN, FELAND, GAGE, STOVALL, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS ~~75-20-102~~, 75-20-104, ~~75-20-201~~, 75-20-202, 75-20-203, ~~75-20-205~~, ~~75-20-211~~, 75-20-212, ~~75-20-213~~, ~~75-20-215~~, ~~75-20-216~~, 75-20-217, ~~75-20-219~~, 75-20-220, 75-20-221, ~~75-20-222~~, ~~75-20-225~~, ~~75-20-226~~, ~~75-20-227~~, 75-20-301, AND 75-20-303, ~~75-20-304~~, ~~75-20-402~~, ~~75-20-403~~, ~~75-20-406~~, ~~75-20-407~~, ~~75-20-408~~, AND ~~85-15-107~~, MCA; REPEALING SECTIONS ~~75-20-103~~, ~~75-20-302~~, ~~75-20-404~~, ~~75-20-409~~, ~~75-20-501~~, SECTION 75-20-502, AND ~~75-20-503~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND, AN APPLICABILITY PROVISION, AND A TERMINATION PROVISION."

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

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

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

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

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

1 definitions apply:

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

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

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

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

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

14 (6) "Certificate" means the certificate of environmental compatibility ~~and public need~~ **AND PUBLIC**  
15 **NEED** issued by the board under this chapter that is required for the construction or operation of a facility.

16 (7) "Commence to construct" means:

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

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

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

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

30 (8) "Department" means the department of natural resources and conservation provided for in Title

1 2, chapter 15, part 33.

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

4 (10) "Facility" means:

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

8 (i) generating ~~50~~ 150 megawatts of electricity or more or any addition thereto, ~~(except pollution~~  
9 ~~control facilities approved by the department of health and environmental sciences and added to an existing~~  
10 ~~plant) having an estimated cost in excess of \$10 million;~~

11 (ii) producing ~~25~~ 250 25 million cubic feet or more of gas derived from coal per day ~~or any addition~~  
12 ~~thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO, EXCEPT  
13 POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN  
14 EXISTING PLANT;

15 (iii) producing ~~25,000~~ 100,000 25,000 barrels of liquid hydrocarbon products per day or more ~~or~~  
16 ~~any addition thereto having an estimated cost in excess of \$10 million~~ OR ANY ADDITION THERETO,  
17 EXCEPT POLLUTION CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED  
18 TO AN EXISTING PLANT; or

19 (iv) enriching uranium minerals ~~or any addition thereto having an estimated cost in excess of \$10~~  
20 ~~million; or~~ OR ANY ADDITION THERETO; OR

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

23 (V) FOR PURPOSES OF 75-20-204 ONLY, GENERATING 50 MEGAWATTS OF HYDROELECTRIC  
24 POWER OR MORE OR ANY ADDITION THERETO;

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

27 (i) does not include an electric transmission line and associated facilities of a design capacity of  
28 230 kilovolts or less and 10 miles or less in length; and

29 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts  
30 and up to and including 115 kilovolts for which the person planning to construct the line has obtained

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

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

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

9 ~~(e) any underground in situ gasification of coal~~ OR ANY ADDITION THERETO, EXCEPT POLLUTION  
10 CONTROL FACILITIES APPROVED BY THE DEPARTMENT OF HEALTH AND ADDED TO AN EXISTING  
11 PLANT;

12 (E) ANY UNDERGROUND IN SITU GASIFICATION OF COAL.

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

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

18 (13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,  
19 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."  
20

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

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

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

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

30 ~~(4) If the board decides to issue a certificate for a nuclear facility, it shall report such that~~

1 ~~recommendation to the applicant and may not issue the certificate until such the recommendation is~~  
 2 ~~approved by a majority of the voters in a statewide election called by initiative or referendum according to~~  
 3 ~~the laws of this state.~~

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

6  
 7 **Section 2.** Section 75-20-202, MCA, is amended to read:

8 **"75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under  
 9 diligent onsite physical construction or in operation on January 1, 1973.

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

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

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

15 (ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of  
 16 which will result in greater efficiency, promote energy conservation, and promote greater system reliability  
 17 than the existing facility.

18 ~~(3) The board shall waive compliance with the requirements of this chapter if the applicant makes~~  
 19 ~~a clear and convincing showing to the board at a public hearing that:~~

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

23 ~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be~~  
 24 ~~located support a waiver by resolution;~~

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

27 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the~~  
 28 ~~facility is proposed to be located.~~

29 ~~(3)(4)(3)~~ A person proposing to construct an exempt facility shall pay to the department reasonable  
 30 costs, if any, incurred by the department in processing the exemption.

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

4  
5           **Section 3.** Section 75-20-203, MCA, is amended to read:

6           **"75-20-203. Certificate transferable.** A certificate may be transferred, ~~subject to the approval of~~  
7 ~~the board,~~ to a person who agrees to comply with the terms, conditions, and modifications contained  
8 ~~therein~~ in the certificate."

9  
10          ~~**Section 6.** Section 75-20-205, MCA, is amended to read:~~

11          ~~**"75-20-205. Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(e) and~~  
12 ~~associated facilities certified under this chapter, the board shall condition the certificate upon board~~  
13 ~~approval of a final centerline location.~~

14          ~~(2) The final centerline location must be determined in a noncontested case proceeding before the~~  
15 ~~board after the submission of a centerline location report by the department. Within 60 days after the~~  
16 ~~commencement of a noncontested case proceeding, the board shall render and record a decision approving~~  
17 ~~a centerline location.~~

18          ~~(3) The department shall consult with the certificate holder and the affected landowners prior to~~  
19 ~~making its report.~~

20          ~~(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and~~  
21 ~~75-20-503 and the findings of fact and conclusions of law set out in the board decision.~~

22          ~~(5) The department report may be completed on segments of a certified facility as is convenient~~  
23 ~~to the certificate holder.~~

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

28  
29          ~~**Section 7.** Section 75-20-211, MCA, is amended to read:~~

30          ~~**"75-20-211. Application — filing and contents — proof of service and notice.** (1) (a) An applicant~~



1 shall file with the department and department of health a joint application for a certificate under this chapter  
2 and for the permits required under the laws administered by the department of health and the board of  
3 health in such the form as the board requires under applicable rules, containing the following information:

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

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

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

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

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

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

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

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

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

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

24 (3) An application shall be accompanied by proof of service of a copy of the application on the  
25 chief executive officer of each unit of local government, county commissioner, city or county planning  
26 boards, and federal agencies charged with the duty of protecting the environment or of planning land use  
27 in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be  
28 located and on the following state government agencies:

29 (a) environmental quality council;

30 (b) department of public service regulation;

1 ~~(c) department of fish, wildlife, and parks;~~

2 ~~(d) department of state lands;~~

3 ~~(e) department of commerce;~~

4 ~~(f) department of transportation.~~

5 ~~(4) (3) The copy of the application shall must be accompanied by a notice specifying the date on~~  
6 ~~or about which the application is to be filed.~~

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

11  
12 **Section 4.** Section 75-20-212, MCA, is amended to read:

13 "75-20-212. **Cure for failure of service.** Inadvertent failure of service on or notice to any of the  
14 municipalities, government agencies, or persons identified in ~~75-20-211(3) and (5)~~ 75-20-211 may be cured  
15 pursuant to orders of the department designed to afford them adequate notice to enable their effective  
16 participation in the proceeding."

17  
18 ~~**Section 9.** Section 75-20-213, MCA, is amended to read:~~

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

23 ~~(2) An application may be amended by an applicant any time prior to the department's~~  
24 ~~recommendation. If the proposed amendment is such that it prevents the department, or the department~~  
25 ~~of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under~~  
26 ~~this chapter, the department may require such additional filing fees as the department determines justifies~~  
27 ~~to the applicant as necessary, or the department may require a new application and filing fee.~~

28 ~~(3) The applicant shall submit supplemental material in a timely manner as requested by the~~  
29 ~~department or as offered by the applicant to explain, support, or provide the detail with respect to an item~~  
30 ~~described in the original application, without filing an application for an amendment. The department's~~

1 ~~determination as to whether information is supplemental or whether an application for amendment is~~  
 2 ~~required shall be conclusive."~~

3

4 ~~Section 10. Section 75-20-215, MCA, is amended to read:~~

5 ~~"75-20-215. Filing fee ~~accountability~~ ~~refund~~ ~~use.~~ (1) (a) A filing fee shall must be deposited~~  
 6 ~~in the state special revenue fund for the use of the department in administering this chapter. The applicant~~  
 7 ~~shall pay to the department a filing fee as provided in this section based upon the department's estimated~~  
 8 ~~costs of processing the application under this chapter, but which shall. The filing fee may not exceed the~~  
 9 ~~following scale based upon the estimated cost of the facility:~~

- 10 ~~(i) 4% of any estimated cost up to \$1 million; plus~~  
 11 ~~(ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus~~  
 12 ~~(iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus~~  
 13 ~~(iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus~~  
 14 ~~(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus~~  
 15 ~~(vi) 0.05% of any amount of estimated cost over \$1 billion.~~

16 ~~(b) The department may allow in its discretion shall grant a credit against the fee payable under~~  
 17 ~~this section for the development of information or providing of services required hereunder under this~~  
 18 ~~chapter or required for preparation of an environmental impact statement under the Montana or national~~  
 19 ~~environmental policy acts. The applicant may submit the information to the department together with an~~  
 20 ~~accounting of the expenses incurred in preparing the information. The department shall evaluate the~~  
 21 ~~applicability, validity, and usefulness of the data and determine the amount which may be credited against~~  
 22 ~~the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time~~  
 23 ~~be reduced if the department determines documents to the applicant that it is necessary to carry out its~~  
 24 ~~responsibilities under this chapter.~~

25 ~~(2) (a) The department may contract with an applicant for the development of information,~~  
 26 ~~provision of services and payment of fees required under this chapter. The contract may continue an~~  
 27 ~~agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract~~  
 28 ~~shall must be credited against the fee payable hereunder under this section. Notwithstanding the provisions~~  
 29 ~~of this section, the revenue derived from the filing fee must be sufficient to enable the department, the~~  
 30 ~~department of health, the board, and the board of health, and the agencies listed in 75-20-216(5) to carry~~

1 out their responsibilities under this chapter. The department may amend a contract to require additional  
 2 payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice  
 3 to the applicant. The department and applicant may enter into a contract which exceeds the scale provided  
 4 in subsection (1)(a).

5 (b) If a contract is not entered into, the applicant shall pay the filing fee in installments in  
 6 accordance with a schedule of installments developed by the department, provided that no one installment  
 7 may exceed 20% of the total filing fee provided for in subsection (1).

8 (3) The estimated cost of upgrading an existing transmission substation may not be included in the  
 9 estimated cost of a proposed facility for the purpose of calculating a filing fee.

10 (4) If an application consists of a combination of two or more facilities, the filing fee shall must be  
 11 based on the total estimated cost of the combined facilities.

12 (5) The applicant is entitled to an accounting of moneys expended and to a refund with interest  
 13 at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out  
 14 its responsibilities under this chapter. A refund shall must be made after all administrative and judicial  
 15 remedies have been exhausted by all parties to the certification proceedings.

16 (6) The revenues derived from filing fees shall must be used by the department in compiling the  
 17 information required for rendering a decision on a certificate and for carrying out its and the board's other  
 18 responsibilities under this chapter."

19  
 20 **Section 11.** Section 75-20-216, MCA, is amended to read:

21 **"75-20-216. Study, evaluation, and report on proposed facility—assistance by other agencies.** (1)  
 22 After receipt of an application, the department and department of health shall within 90 days notify the  
 23 applicant in writing that:

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

25 (b) the application is not in compliance and list the deficiencies therein; and upon Upon correction  
 26 of these deficiencies and resubmission by the applicant, the department and department of health shall  
 27 within 30 days notify the applicant in writing that the application is in compliance and is accepted as  
 28 complete.

29 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and  
 30 this section, the department shall commence an intensive study and evaluation of the proposed facility and

1 ~~its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of~~  
2 ~~health shall commence a study to enable it or the board of health to issue a decision, opinion, order,~~  
3 ~~certification, or permit as provided in subsection (3). The department and department of health shall use,~~  
4 ~~to the extent they consider applicable, valid and useful existing studies and reports submitted by the~~  
5 ~~applicant or compiled by a state or federal agency.~~

6 ~~(3) The department of health shall within 1 year 6 months following the date of acceptance of an~~  
7 ~~application and the board of health or department of health shall, if applicable, within an additional 6 3~~  
8 ~~months, issue any decision, opinion, order, certification, or permit required under the laws administered by~~  
9 ~~the department of health or the board of health and this chapter. The department of health and the board~~  
10 ~~of health shall determine compliance with all standards, permit requirements, and implementation plans~~  
11 ~~under their jurisdiction for the proposed location or any proposed alternate location in their decision,~~  
12 ~~opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without~~  
13 ~~conditions, is conclusive on all matters that the department of health and board of health administer, and~~  
14 ~~any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the~~  
15 ~~determinations made under the laws administered by the department of health and the board of health.~~  
16 ~~Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive,~~  
17 ~~the board retains authority to make the determination required under 75-20-301(2)(c). The decision,~~  
18 ~~opinion, order, certification, or permit of the department of health or the board of health satisfies the review~~  
19 ~~requirements by those agencies and shall be is acceptable in lieu of an environmental impact statement~~  
20 ~~under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit~~  
21 ~~shall be served upon the department and the board and shall be utilized as part of their final site selection~~  
22 ~~process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules~~  
23 ~~adopted by the board of health, the department of health shall provide an opportunity for public review and~~  
24 ~~comment.~~

25 ~~(4) Within 22 months 1 year following acceptance of an application for a facility as defined in (a)~~  
26 ~~and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than~~  
27 ~~30 miles in length, and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30~~  
28 ~~miles or less in length this chapter, the department shall make a report to the board which shall that must~~  
29 ~~contain the department's studies, evaluations, recommendations, other pertinent documents resulting from~~  
30 ~~its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the~~

1 ~~Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities,~~  
 2 ~~the department shall make its report to the board within the greater of the lengths of time provided for in~~  
 3 ~~this subsection for either of the facilities.~~

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

10  
 11 **Section 5.** Section 75-20-217, MCA, is amended to read:

12 **"75-20-217. Voiding an application.** An application may be voided by the department following  
 13 notice and an opportunity for hearing for:

14 (1) any material and knowingly false statement in the application or in accompanying statements  
 15 or studies required of the applicant;

16 (2) failure to file an application in substantially the form and content required by this chapter and  
 17 the rules adopted ~~thereunder~~ under this chapter; or

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

19  
 20 ~~**Section 13.** Section 75-20-219, MCA, is amended to read:~~

21 ~~**"75-20-219. Amendments to a certificate.** (1) Within 30 days after notice of an amendment to a~~  
 22 ~~certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original~~  
 23 ~~proceeding, the department shall determine whether the proposed change in the facility would result in a~~  
 24 ~~material increase in any environmental impact of the facility or a substantial change in the location of all~~  
 25 ~~or a portion of the facility as set forth in the certificate. If the department determines that the proposed~~  
 26 ~~change would result in a material increase in any environmental impact of the facility or a substantial~~  
 27 ~~change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner~~  
 28 ~~as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify~~  
 29 ~~the amendment with such conditions as it deems that are documented as appropriate.~~

30 (2) ~~In those cases where in which the department determines that the proposed change in the~~

1 ~~facility would not result in a material increase in any environmental impact or would not be a substantial~~  
 2 ~~change in the location of all or a portion of the facility, the board shall automatically grant the amendment~~  
 3 ~~either as applied for or upon such terms or conditions as that the board considers appropriate unless the~~  
 4 ~~department's determination is appealed to the board within 15 days after notice of the department's~~  
 5 ~~determination is given.~~

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

10 ~~(4) If the department determines that the proposed change in the facility would not result in a~~  
 11 ~~material increase in any environmental impact or would not be a substantial change in the location of all~~  
 12 ~~or a portion of the facility and a hearing is required because the department's determination is appealed to~~  
 13 ~~the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing~~  
 14 ~~evidence that the proposed change in the facility would result in a material increase in any environmental~~  
 15 ~~impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in~~  
 16 ~~the certificate.~~

17 ~~(5) If an amendment is required to a certificate which is required that would affect, amend, alter~~  
 18 ~~or modify a decision, opinion, order, certification, or permit issued by the department of health or board of~~  
 19 ~~health, such the amendment must be processed under the applicable statutes administered by the~~  
 20 ~~department of health or board of health."~~

21

22 **Section 6.** Section 75-20-220, MCA, is amended to read:

23 **"75-20-220. Hearing examiner -- restrictions -- duties.** (1) If the board appoints a hearing examiner  
 24 to conduct any certification proceedings under this chapter, the hearing examiner may not be a member  
 25 of the board, an employee of the department, or a member or employee of the department of health or  
 26 board of health. A hearing examiner, if any, ~~shall~~ **must** be appointed by the board within 20 days after the  
 27 department's report has been filed with the board. If a hearing is held before the board of health or the  
 28 department of health, the board and the board of health or the department of health shall mutually agree  
 29 on the appointment of a hearing examiner to preside at both hearings.

30 (2) A prehearing conference ~~shall~~ **must** be held following notice within ~~60~~ **30** ~~45~~ days after the

1 department's report has been filed with the board.

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

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

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

12 (6) The hearing examiner shall allow discovery, which ~~shall~~ must be completed before the  
13 commencement of the hearing, upon good cause shown and under ~~such~~ other conditions as the hearing  
14 examiner shall prescribe.

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

18 (8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law,  
19 identifying the witnesses of the active parties, naming the public witnesses and other interested parties who  
20 have submitted written testimony in lieu of appearance, outlining the order in which the hearing ~~shall~~ must  
21 proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised  
22 ~~which~~ that are to be conclusively presumed and are not subject to further proof except for good cause  
23 shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the  
24 approval of the board.

25 (9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and  
26 shall, within ~~60~~ 30 45 days of that date, prepare and submit to the board and in the case of a conjunctive  
27 hearing, within ~~90~~ 45 60 days to the board and the board of health or department of health proposed  
28 findings of fact, conclusions of law, and a recommended decision.

29 (10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall  
30 insure that the time of the proceeding, from the date the department's report is filed with the board until



1 the recommended report and order of the examiner is filed with the board, does not exceed ~~93~~ 8 calendar  
2 months unless extended by the board for good cause.

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

7 **Section 7.** Section 75-20-221, MCA, is amended to read:

8 **"75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1)

9 The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion,  
10 order, certification, or permit by the board of health under this chapter may include as active parties:

11 (a) the applicant;

12 (b) each ~~political entity~~, unit of local government, and government agency, including the  
13 department of health, entitled to receive service of a copy of the application under 75-20-211(3); and

14 ~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~

15 ~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty;~~  
16 ~~to protect the environment, personal health, or other biological values; to preserve historical sites; to~~  
17 ~~promote consumer interests; to represent commercial and industrial groups; or to promote the orderly~~  
18 ~~development of the areas in which the facility is to be located;~~

19 (C) ANY PERSON ENTITLED TO RECEIVE SERVICE OF A COPY OF THE APPLICATION UNDER  
20 75-20-211(5);

21 (D) ANY NONPROFIT ORGANIZATION FORMED IN WHOLE OR IN PART TO PROMOTE  
22 CONSERVATION OR NATURAL BEAUTY; TO PROTECT THE ENVIRONMENT, PERSONAL HEALTH, OR  
23 OTHER BIOLOGICAL VALUES; TO PRESERVE HISTORICAL SITES; TO PROMOTE CONSUMER INTERESTS;  
24 TO REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS; OR TO PROMOTE THE ORDERLY  
25 DEVELOPMENT OF THE AREAS IN WHICH THE FACILITY IS TO BE LOCATED;

26 ~~(e)(e)~~ (E) any other interested person who establishes an interest in the proceeding.

27 (2) The department ~~shall be~~ is an active party in any certification proceeding in which the  
28 department recommends denial of all or a portion of a facility.

29 ~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen~~  
30 ~~and any party referred to in (b), (c), (d), or (e) of subsection (1).~~

1           (3) THE PARTIES TO A CERTIFICATION PROCEEDING MAY ALSO INCLUDE, AS PUBLIC PARTIES,  
 2 ANY MONTANA CITIZEN AND ANY PARTY REFERRED TO IN SUBSECTIONS (1)(B) THROUGH (1)(E).

3           ~~(4)(3)(4)~~ Any party waives the right to be a party if the party does not participate in the hearing  
 4 before the board or the board of health.

5           ~~(5)(4)(5)~~ Each unit of local government entitled to receive service of a copy of the application ~~under~~  
 6 ~~75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends  
 7 to participate in the certification proceeding. ~~If the unit of local government does not intend to participate,~~  
 8 ~~it shall list in this statement its reasons for failing to do so. This statement of intent shall be published~~  
 9 ~~before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable~~  
 10 ~~unit of local government."~~

11  
 12           ~~Section 16. Section 75-20-222, MCA, is amended to read:~~

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

17           ~~(2) A record shall must be made of the hearing and of all testimony taken.~~

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

21           ~~(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the~~  
 22 ~~procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of~~  
 23 ~~evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties~~  
 24 ~~to the hearing. No other rules of procedure or evidence shall apply except that the contested case~~  
 25 ~~procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures~~  
 26 ~~set forth in this chapter or the procedural rules adopted by the board."~~

27  
 28           ~~Section 17. Section 75-20-225, MCA, is amended to read:~~

29           ~~"75-20-225. Certificate renewal — application — contents — filing fee. (1) Any certificate holder for~~  
 30 ~~a facility as defined in 75-20-104(10)(a)(i) may apply for renewal of a certificate prior to the certificate~~

1 lapsing.

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

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

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

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

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

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

16

17 **Section 18.** ~~Section 75-20-226, MCA, is amended to read:~~

18 ~~"75-20-226. Renewal study. (1) Upon receipt of a completed application for renewal of a~~  
19 ~~certificate, the department shall evaluate the updated information and any significant changes in need,~~  
20 ~~alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken~~  
21 ~~place since the original study performed in granting the certificate, considering the applicable criteria listed~~  
22 ~~in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.~~

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

27 ~~(3) Within 12 months following acceptance of a complete application for renewal of a certificate,~~  
28 ~~the department shall make a report to the board. This report must contain the department's studies,~~  
29 ~~evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and~~  
30 ~~an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act.~~

1 ~~The department's report must be directed to the question of whether the original board findings and~~  
 2 ~~conditions have been or need to be altered as a result of any significant changes in need, alternatives,~~  
 3 ~~technology, baseline environment, or environmental impact since issuance of the certificate, considering~~  
 4 ~~the applicable criteria listed in 75-20-301 and 75-20-503.~~

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

11  
 12 **Section 19.** Section 75-20-227, MCA, is amended to read:

13 ~~"75-20-227. Certificate renewal hearing decision. (1) The board shall follow the provisions of~~  
 14 ~~75-20-218 through 75-20-222 in making decisions on certificate renewals.~~

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

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

22  
 23 **Section 8.** Section 75-20-301, MCA, is amended to read:

24 **"75-20-301. Decision of board -- findings necessary for certification.** (1) Within 60 days after  
 25 submission of the recommended decision by the hearing examiner, the board shall make complete findings,  
 26 issue an opinion, and render a decision upon the record, either granting or denying the application as filed  
 27 or granting it upon ~~each~~ terms, conditions, or modifications of the construction, operation, or maintenance  
 28 of the facility as the board considers appropriate.

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

1 (a) ~~the basis of the need for the facility;~~ THE BASIS OF THE NEED FOR THE FACILITY;

2 ~~(b)(B)~~ the nature of the probable environmental impact;

3 ~~(c) that the facility minimizes adverse environmental impact, considering the state of available~~  
4 ~~technology and the nature and economics of the various alternatives;~~

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

6 (C) THAT THE FACILITY MINIMIZES ADVERSE ENVIRONMENTAL IMPACT, CONSIDERING THE  
7 STATE OF AVAILABLE TECHNOLOGY AND THE NATURE AND ECONOMICS OF THE VARIOUS  
8 ALTERNATIVES;

9 (D) EACH OF THE CRITERIA LISTED IN 75-20-503;

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

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

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

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

15 ~~(f)(e)(F)~~ that the location of the facility as proposed conforms to applicable state ~~and local~~ AND  
16 LOCAL laws and regulations issued thereunder, ~~except that the board may refuse to apply any local law~~  
17 ~~or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably~~  
18 ~~restrictive in view of the existing technology, of factors of cost or economics, or of the needs of~~  
19 ~~consumers, whether located inside or outside of the directly affected government subdivisions, EXCEPT~~  
20 THAT THE BOARD MAY REFUSE TO APPLY ANY LOCAL LAW OR REGULATION IF IT FINDS THAT, AS  
21 APPLIED TO THE PROPOSED FACILITY, THE LAW OR REGULATION IS UNREASONABLY RESTRICTIVE IN  
22 VIEW OF THE EXISTING TECHNOLOGY, OF FACTORS OF COST OR ECONOMICS, OR OF THE NEEDS OF  
23 CONSUMERS, WHETHER LOCATED INSIDE OR OUTSIDE OF THE DIRECTLY AFFECTED GOVERNMENT  
24 SUBDIVISIONS; and

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

26 (G) THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

27 ~~(h)(d)(H)~~ that the department of health or board of health ~~have~~ has issued a decision, opinion,  
28 order, certification, or permit as required by 75-20-216(3); ~~and~~

29 ~~(i) that the use of public lands for location of the facility was evaluated and public lands were~~  
30 ~~selected whenever their use is as economically practicable as the use of private lands and compatible with~~

1 ~~the environmental criteria listed in 75-20-503.~~

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

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

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

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

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

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

9 ~~(4) Considerations of need, public need, or public convenience and necessity and demonstration~~  
 10 ~~thereof by the applicant shall apply only to utility facilities; AND~~

11 (I) THAT THE USE OF PUBLIC LANDS FOR LOCATION OF THE FACILITY WAS EVALUATED AND  
 12 PUBLIC LANDS WERE SELECTED WHENEVER THEIR USE IS AS ECONOMICALLY PRACTICABLE AS THE  
 13 USE OF PRIVATE LANDS AND COMPATIBLE WITH THE ENVIRONMENTAL CRITERIA LISTED IN  
 14 75-20-503.

15 (3) IN DETERMINING THAT THE FACILITY WILL SERVE THE PUBLIC INTEREST, CONVENIENCE,  
 16 AND NECESSITY UNDER SUBSECTION (2)(G), THE BOARD SHALL CONSIDER:

17 (A) THE ITEMS LISTED IN SUBSECTIONS (2)(A) AND (2)(B);

18 (B) THE BENEFITS TO THE APPLICANT AND THE STATE RESULTING FROM THE PROPOSED  
 19 FACILITY;

20 (C) THE EFFECTS OF THE ECONOMIC ACTIVITY RESULTING FROM THE PROPOSED FACILITY;

21 (D) THE EFFECTS OF THE PROPOSED FACILITY ON THE PUBLIC HEALTH, WELFARE, AND  
 22 SAFETY;

23 (E) ANY OTHER FACTORS THAT IT CONSIDERS RELEVANT.

24 (4) CONSIDERATIONS OF NEED, PUBLIC NEED, OR PUBLIC CONVENIENCE AND NECESSITY AND  
 25 DEMONSTRATION THEREOF BY THE APPLICANT APPLY ONLY TO UTILITY FACILITIES DESCRIBED IN  
 26 75-20-104(10)(A)(I), (10)(B), (10)(C), AND (10)(D)."

27  
 28 **Section 9.** Section 75-20-303, MCA, is amended to read:

29 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
 30 for a certificate, the board shall issue an opinion stating its reasons for the action taken.

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

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

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

7 (i) the environmental impact of the proposed facility; and

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

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

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

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

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

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

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

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

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

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

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

24 (b) Unless extended or renewed ~~in accordance with subsection (4)(c) or 75-20-225 through~~  
25 ~~75-20-227~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility  
26 is not commenced within the time limits provided in this section.

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

1 process of judicial review of any such permit or certificate.

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

4  
 5 **Section 22.** ~~Section 75-20-304, MCA, is amended to read:~~

6 ~~"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance~~  
 7 ~~with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant~~  
 8 ~~makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for~~  
 9 ~~a facility exists and that the applicant did not have knowledge that the need for the facility existed~~  
 10 ~~sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501,~~  
 11 ~~and this part.~~

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

17 ~~(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c)~~  
 18 ~~of 75-20-301 and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and~~  
 19 ~~75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and~~  
 20 ~~convincing showing to the board at a public hearing that:~~

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

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

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

28 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the~~  
 29 ~~facility is proposed to be located.~~

30 ~~(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single~~



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

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

8 (6) ~~(3)~~ The applicant shall pay all expenses required to process and conduct a hearing on a waiver  
9 request under subsection (3). However, any payments made under this subsection shall must be credited  
10 toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the  
11 decision of the board under subsection (3) this section can be used in making a certification decision under  
12 this chapter.

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

15  
16 **Section 23.** Section 75-20-402, MCA, is amended to read:

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

24  
25 **Section 24.** Section 75-20-403, MCA, is amended to read:

26 ~~"75-20-403. Revocation or suspension of certificate. Following notice and an opportunity for a~~  
27 ~~hearing, a certificate may be revoked or suspended by the board:~~

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

30 (2) ~~for failure to maintain safety standards or to comply with the terms or conditions of the~~

1 certificate; or

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

4  
5 ~~Section 25. Section 75-20-406, MCA, is amended to read:~~

6 ~~"75-20-406. Judicial review of board Board, board of health, and department of health decisions.~~

7 ~~(1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application~~  
8 ~~for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court~~  
9 ~~of competent jurisdiction.~~

10 ~~(2) The judicial review procedure shall be the same as that for contested cases under the Montana~~  
11 ~~Administrative Procedure Act.~~

12 ~~(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3)~~  
13 ~~and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant~~  
14 ~~to the laws administered by the department of health and the board of health and this chapter, the decision~~  
15 ~~may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and~~  
16 ~~(2). If a permit or certification is denied by the department of health or the board of health, the applicant~~  
17 ~~may:~~

18 ~~(a) appeal the denial under the appellate review procedures provided in the laws administered by~~  
19 ~~the department of health and the board of health; or~~

20 ~~(b) reserve the right to appeal the denial by the department of health or the board of health until~~  
21 ~~after the board has issued a final decision.~~

22 ~~(4) (2) Nothing in this This section may not be construed to prohibit the board from holding a~~  
23 ~~hearing as herein provided in this section on all matters that are not the subject of a pending appeal by the~~  
24 ~~applicant under subsection (3)(a) (1)(a)."~~

25  
26 ~~Section 26. Section 75-20-407, MCA, is amended to read:~~

27 ~~"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401,~~  
28 ~~75-20-406, and 75-20-408, no a court of this state has does not have jurisdiction to hear or determine any~~  
29 ~~issue, case, or controversy concerning any matter which that was or could have been determined in a~~  
30 ~~proceeding before the board under this chapter or to stop or delay the construction, operation, or~~

1 maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate  
 2 issued hereunder pursuant to ~~75-20-404 and 75-20-405 or 75-20-408.~~"

3  
 4 ~~Section 27.~~ Section 75-20-408, MCA, is amended to read:

5 ~~"75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever~~  
 6 ~~A person who commences to construct or operate a facility without first obtaining a certificate required~~  
 7 ~~under 75-20-201 or a waiver thereof under 75-20-304(2) or without having first having obtained a~~  
 8 ~~certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or~~  
 9 ~~violates any other provision of this chapter or any rule or order adopted thereunder under this chapter or~~  
 10 ~~knowingly submits false information in any report, 10-year plan, or application required by this chapter or~~  
 11 ~~rule or order adopted thereunder under this chapter or causes any of the aforementioned acts to occur is~~  
 12 ~~liable for a civil penalty of not more than \$10,000 for each violation.~~

13 ~~(b) Each day of a continuing violation constitutes a separate offense.~~

14 ~~(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state~~  
 15 ~~in the district court of the first judicial district of Montana.~~

16 ~~(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000~~  
 17 ~~for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation~~  
 18 ~~constitutes a separate offense.~~

19 ~~(3) (2) In addition to any penalty provided in subsection (1) or (2), whenever the department~~  
 20 ~~determines that a person is violating or is about to violate any of the provisions of this section, it may refer~~  
 21 ~~the matter to the attorney general who may bring a civil action on behalf of the state in the district court~~  
 22 ~~of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to~~  
 23 ~~enforce this chapter or a certificate issued hereunder under this chapter. Upon a proper showing, a~~  
 24 ~~permanent or preliminary injunction or temporary restraining order shall be granted without bond.~~

25 ~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the~~  
 26 ~~enforcement through its own legal counsel.~~

27 ~~(6) (3) All fines and penalties collected shall must be deposited in the state special revenue fund~~  
 28 ~~for the use of the department in administering this chapter."~~

29  
 30 ~~Section 28.~~ Section 85-15-107, MCA, is amended to read:

1           ~~"85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through~~  
 2 ~~85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:~~

3           ~~(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is~~  
 4 ~~subject to the permit;~~

5           ~~(b) federal dams and reservoirs;~~

6           ~~(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory~~  
 7 ~~commission; or~~

8           ~~(d) dams that are required to obtain a certificate of environmental compatibility and public need~~  
 9 ~~pursuant to 75-20-201 for the period during which the dam is subject to the certificate.~~

10           ~~(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401,~~  
 11 ~~85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they~~  
 12 ~~are subject to a dam safety review by a federal agency.~~

13           ~~(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site~~  
 14 ~~as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~  
 15 ~~(CERCLA), Public Law 96-510."~~

16  
 17           NEW SECTION. SECTION 10. REPORTS. THE DEPARTMENT OF NATURAL RESOURCES AND  
 18 CONSERVATION SHALL PREPARE AND PRESENT A REPORT TO THE 55TH LEGISLATURE WITH  
 19 RECOMMENDATIONS FOR IMPROVING AND MODERNIZING THE MONTANA MAJOR FACILITY SITING  
 20 ACT. THE DEPARTMENT SHALL CONVENE A STATE DIALOGUE TO DEVELOP THE REPORT AND  
 21 RECOMMENDATIONS. THE PARTICIPANTS IN THE DIALOGUE SHALL REPRESENT A BROAD SPECTRUM  
 22 OF INTERESTS AFFECTED BY THE SITING, CONSTRUCTION, AND OPERATION OF MAJOR FACILITIES,  
 23 INCLUDING UTILITIES, ENERGY DEVELOPMENT GROUPS, INTERESTED INDUSTRIES, RATEPAYERS,  
 24 REGULATORS, LANDOWNERS, AND CITIZEN GROUPS. THE DIALOGUE IS TO BE DESIGNED TO SEEK  
 25 THE INVOLVEMENT OF A BROAD RANGE OF AFFECTED INTEREST GROUPS IN THE DISCUSSIONS OF  
 26 REFORMING THE MONTANA MAJOR FACILITY SITING ACT, WITH THE EXPRESS INTENT OF ELICITING  
 27 A CONSENSUS. THE CONSENSUS DEVELOPING PROCESS MUST USE A FACILITATOR WHO IS NOT AN  
 28 EMPLOYEE OF THE DEPARTMENT.

29  
 30           NEW SECTION. SECTION 11. TERMINATION. THE AMENDMENT TO 75-20-104(10)(A)(I)

1 CONTAINED IN [SECTION 1] THAT INCREASES THE MEGAWATTS OF ELECTRICITY PRODUCED FROM  
2 "50" TO "150" TERMINATES ON JUNE 30, 1997.

3  
4 NEW SECTION. SECTION 12. APPLICABILITY. (1) A PERSON WHO, BETWEEN [THE EFFECTIVE  
5 DATE OF THIS ACT] AND JUNE 30, 1997, HAS SUBMITTED A CORRECT AND COMPLETE APPLICATION  
6 FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE DEPARTMENT OF HEALTH AND  
7 ENVIRONMENTAL SCIENCES OR HAS COMMENCED TO CONSTRUCT OR COMMENCED OR APPLIED TO  
8 UPGRADE A POWER PLANT THAT HAS BEEN DESIGNED FOR OR WILL BE CAPABLE OF GENERATING  
9 LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75, CHAPTER 20.

10 (2) A PERSON WHO, BETWEEN [THE EFFECTIVE DATE OF THIS ACT] AND JUNE 30, 1997, HAS  
11 FILED AN APPLICATION FOR ALL APPLICABLE AIR AND WATER QUALITY PERMITS FROM THE  
12 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR A POWER PLANT CAPABLE OF  
13 GENERATING LESS THAN 150 MEGAWATTS IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75,  
14 CHAPTER 20, IF THE APPLICATION IS CORRECT AND COMPLETE AS OF OCTOBER 1, 1997.

15  
16 NEW SECTION. Section 13. Repealer. Sections ~~75-20-103, 75-20-302, 75-20-404, 75-20-409,~~  
17 ~~75-20-501,~~ SECTION 75-20-502, and ~~75-20-603,~~ MCA, are IS repealed.

18  
19 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

20 -END-